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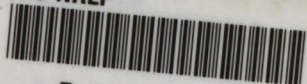
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RADER'S
CIVIL GOVERNMENT
OF THE UNITED STATES
AND THE STATE OF MISSOURI
REVISED EDITION

1917

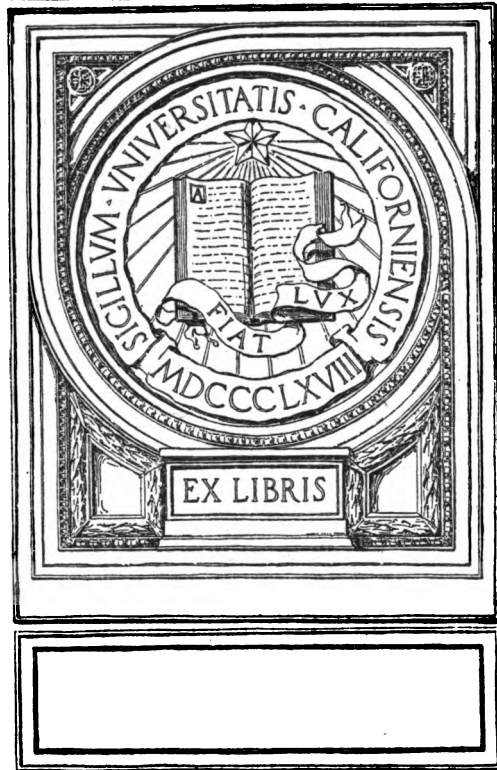
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JANE K.SATHER



CIVIL GOVERNMENT

OF THE UNITED STATES

AND

THE STATE OF MISSOURI

REVISED EDITION

The Two Hundred and Eleventh Thousand

BY

PERRY S. RADER



THE HUGH STEPHENS COMPANY
JEFFERSON CITY, MISSOURI

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72.

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PREFACE.

When the State Text-Book Commission met in the year 1897 to adopt a series of text-books for use in public schools, about thirty civil governments were submitted for adoption. None of them was satisfactory. Thereupon members of the commission who were acquainted with my School History of Missouri suggested that I write and submit a manuscript of a Civil Government. I did so, and it was adopted, and for five years after its publication it had a large place in the schools. Subsequently the book was entirely rewritten and a revised edition brought out in 1904, and with a few minor changes in the text made necessary by changes in laws and constitutions has been in general use ever since. Within the last year the book has been thoroughly revised again. In the natural evolution of the government of a great people new institutions are added in the course of a few years and things once unimportant assume large proportions; they call for new sections, and these have been added. Other things have become less important, and the discussion of them has been accordingly reduced. Every sentence of former texts retained in this has been rigidly tested, in order to bring it strictly up to date and make it accurately express the fact. The result is a book brought down in every sentence to the date of publication.

In the development of the book I have not attempted to construct an ideal government. Nor have I enlarged upon the imperfections of American government. I have been content to present the Government as it is. The scientist who writes a text-book on botany traces plant life from seed to full-grown tree. He does not try to construct an imaginary

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tree; he does not consider himself responsible for imperfections he finds in leaf and flower. He takes the whole tree as he finds it. In the seed he finds a tree in embryo, and from that seed he traces the tree as it unfolds into plant and trunk and limb and bark and leaf and flower. That is the scientific method which has been pursued in the writing of this book. The unfolding and development of Government have been traced step by step through Colonial charters, State constitutions, the Constitution of the United States, then back to Territorial government, State government again, and from State government to the organization and government of counties, cities and school districts; and that method has been pursued because it was by those steps that American government grew and developed into what it now is. It is therefore the natural method, and hence the scientific and pedagogical method.

I have tried to write with a teacher and a class of boys and girls who have familiarized themselves with the main facts of the history of the United States constantly before my eyes; and as I have looked into their faces and written, two other great facts have stood out before me. The first is that, next to spelling, reading, penmanship and arithmetic, the subject of Government is the most practical in the course of study prescribed for schools. As population grows denser, as cities are built and public improvements are undertaken, Government draws closer and closer to the people, and more and more touches on the privileges and duties of citizens. At almost every step and turn the citizen now meets the Government, and his rights and its powers constantly confront each other. Government has become all-comprehensive. There is scarcely an industry into which it has not thrust its powerful hand, and scarcely a relationship between men that it has not undertaken to regulate. It is, therefore, a thing that concerns every one, and the study of the subject that intimately concerns every one is a most practical study.

The next great fact that has stood out before me as I have

written is that Government is a hard subject, difficult for the teacher and difficult for the pupil. This impediment to its study I have endeavored to lessen as far as possible. With the teacher and class before me, and a consciousness that the subject is hard, I have been controlled by a desire to use the easiest words that would accurately express the facts. My ambition has been to write a text-book on Civics that would not only be sufficiently comprehensive for the average citizen, but whose statements would be both scrupulously accurate and at the same time expressed in the plainest words and easiest sentences ever put into print. I have further tried to overcome this impediment by making the discussions interesting; and I have therefore made use of every allowable element that will enlist attention and add illumination—even to the extent of using illustrations, which is a method of discussion condemned by some authors of text-books, and by weaving in statements that of themselves are of minor importance, but which aid to a better comprehension of those which it is necessary to understand.

At the same time I have constantly had in mind the necessity for a text that is teachable or pedagogical. The arrangement is all my own. The division of the subjects of government, as indicated by the titles to the various chapters, and the sub-division of each subject into its component parts, as indicated by the titles to the sections, not only constitute a natural analysis, but afford the easiest way to come to a comprehension of government as a whole.

The questions at the end of each chapter are not designed for use in recitations. In some cases they may be used with profit by the teacher. But their primary design is to aid the pupil in centering his mind upon the facts stated in the text that must be known.

The book is sufficiently elaborate to meet all needs of high schools and common schools. A shorter book would be incomplete and insufficient for the needs of common schools.

To use a more comprehensive book would be to enlarge the high school into a law school or a political science department of a university.

The author wishes to express his thanks to many teachers who had used former revisions of his Civil Government and in letters and otherwise have made valuable suggestions as the revision went on. Possibly their help would have been more valuable if they had found more faults in the former book; but their kindly approval and sympathetic interest have added to the pleasure of the author's labors.

The author also desires to express his grateful acknowledgments to the publisher. Improvements in the mechanical construction of the book has been a matter of pride with him. In every possible way he has sought to lighten the author's labors and to aid him in improving the text. While I have striven for accuracy, easy expression and interesting discussion, and to produce a text-book which measures up to the best pedagogical standards, he has striven for a beautiful page and beautiful and substantial covering. The cloth, the boards, the paper, the type, the binding have all come under his eye and are his selections. Their substantial character is due to him. The beauty of the volume is due to him. Being a native son of Missouri whose ancestors have for three generations been citizens of the State, and the owner of the only Missouri publishing house which undertakes to publish text-books for use in schools, it is natural that he would take pride in printing the only strictly Missouri book that is offered to Missouri schools. But he has an even greater interest than that: for twenty years, covering the entire period of his mature manhood, he has given to the book his labor and study and friendly interest, and guided its growth into general favor; in consequence, it has, in a large sense, become a part of his own life, a creature of his heart and hands.

THE AUTHOR.

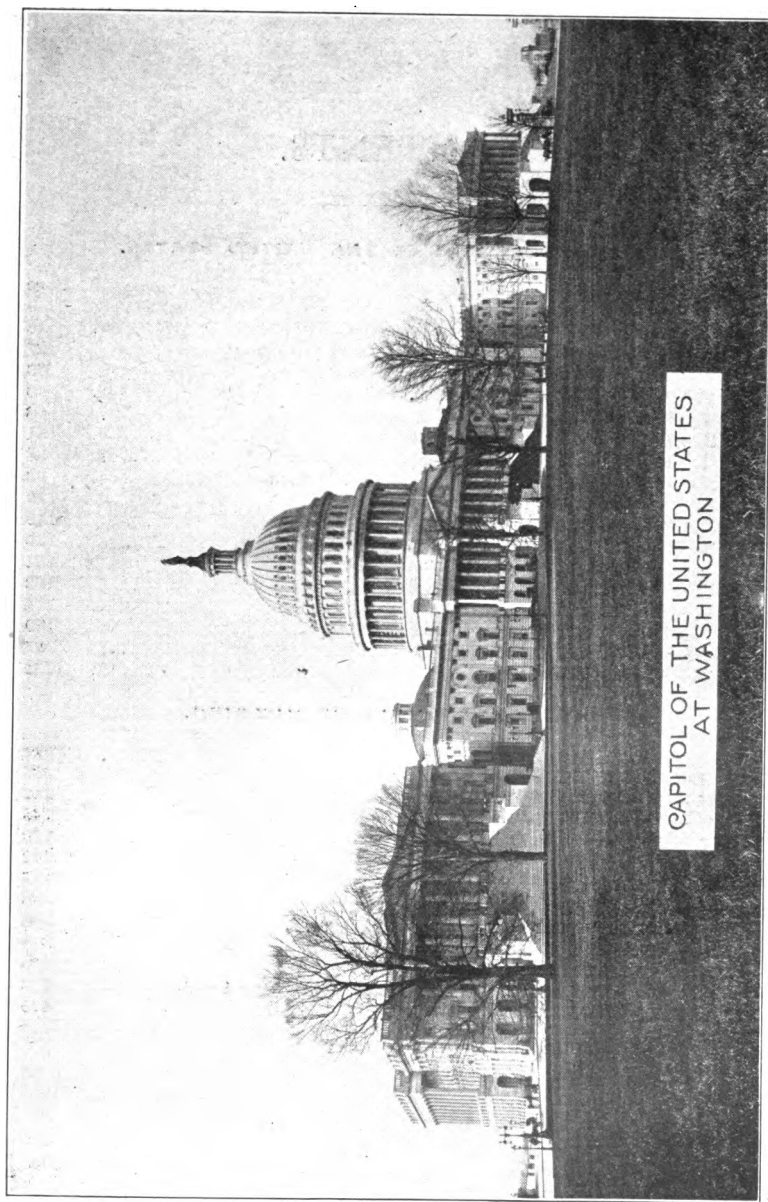
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CAPITOL OF THE UNITED STATES
AT WASHINGTON

CIVIL GOVERNMENT OF THE UNITED STATES.

CHAPTER I.

GENERAL PRINCIPLES.

1a. What Government Is.—In the home children are trained, required to be in bed at night, work certain hours of the day, observe good manners at table, use certain words in addressing others, and pursue habits of personal cleanliness; the father exercises authority in certain things, the mother in other ways; the boys are given certain work, and the girls other duties; the regulations change as the children grow older. That is family government, and there can be no peace or order in the home without some such government.

In the school the pupils are placed in classes and each member of the class is required to prepare the same lessons and use like books; they are required to be at the school at given hours, to spend an allotted time in study, and to obey the directions of the teacher. Without such regulations there would be disorder and confusion, no system in study, no advancement in learning. Teachers must be employed, and that means there must be boards to employ them, and those boards must be supplied with money with which to pay teachers and build school houses. If the school is a public one the money must be raised by taxation, and if a private one it must be raised in some other way. The boards make certain rules for the guidance of the teacher, and others to be observed by the pupils. And the duties of the boards are

prescribed by law, or if a private school, such as a college, by the bodies creating them. So teachers and boards are a part of the school, and are required to do certain things, just as the pupils are required to do others. That is school government.

With those illustrations in mind, as explanatory, we are ready to define government. To govern is to direct and control; to regulate by authority; to restrain; to establish and maintain order. Government is the act of governing; it is the mode of governing; it is the exercise of authority; it is an attempt to establish and maintain order. There is government in the home, government of the church, government of the school, government of the city, government of the county, government of the state, and government of the nation, and all are attempts to establish order, avoid confusion and discord, and bring about concerted action; and that is accomplished by the establishment of rules, regulations or laws, and investing certain persons or officers with authority to compel their observance.

What is meant by government in this book is government of the nation, the state, and of counties, cities and schools in the state; it is that public authority which regulates and determines the personal and property rights of all the people within the nation or state, or any of its smaller divisions. It consists of laws and officers, and the methods by which the laws are enacted and enforced. Government, then, is organized public authority.

1. Reasons for Government.—The Declaration of Independence proclaimed that all men are endowed by their Creator with certain "unalienable rights," or rights that cannot be taken from them, and that "among these are life, liberty and the pursuit of happiness," and that "to secure these rights governments are instituted among men." This is a comprehensive reason for government. The purpose of government is to protect the people in their right to "life,

liberty and the pursuit of happiness." Government does not give life or liberty; those are Heaven-born rights. But government may aid every man in using his life and liberty in an orderly and useful way, and it has the right to say that he shall not so use either as to transgress upon the life or liberty of another. Its purpose is to aid all men in a just and intelligent pursuit of happiness; and that is the real reason for government—in order that men may justly and intelligently use their lives and liberty in the pursuit of happiness. Without government life would be insecure, liberty uncertain, property valueless, and the various pursuits of industry impossible. All civilized peoples have had government in some form, and the better they have become the more firmly established have been their governments.

2. Forms of Government.—In this age the principal governments may be divided into two classes, monarchies and republics. The word monarchy means the rule of one man, the government of one person. In such a nation all power resides in and proceeds from one monarch. There have been nations in which the ruler, styled king, despot, emperor, czar, shah or sultan, had absolute power of life and death over the people. He made his decrees for their control, interpreted them as he wished, and enforced them according to his own caprice. He took the lives of his subjects at will, appropriated their property at pleasure and maintained his authority by force. Such a government is usually called an absolute monarchy or despotism. It cannot exist where the people are generally educated, and knowing their rights have the courage to maintain them. But perhaps no important nation at this time can be said to be an absolute monarchy. Not many years ago Russia and China were such. But in them and all other great nations the people are more and more taking the government into their own hands; and in the worst big nations officers chosen by a part of the people, at least, have a part in enacting laws,

which limit, in some respects, the absolute will of the ruler.

A limited monarchy is a government in which the powers of the monarch are limited by laws. These are enacted by a parliament whose members have been chosen by the people, or a part of them, or established by the people in some other way, and are enforced by courts. In some limited monarchies there is a constitution, or a charter of rights, to which the monarch must submit. The monarch, in such cases, is at the head of the executive branch of the government, and is called king or emperor. England is the best example of a limited monarchy. For more than eight hundred years she has had a hereditary king or queen, but since King John's time her people have had their bill of rights, or the Magna Charta (the Great Charter), and for centuries she has had a Parliament, consisting of the House of Lords and the House of Commons, to enact laws for the kingdom, and courts to enforce those laws. But the powers of the sovereign are not the same in any two limited monarchies. In England they are largely formal and perfunctory; in Germany, they are extensive and great.

An oligarchy means government by a few men. The word aristocracy literally means the rule of the best, and **an aristocracy** means government by the principal persons of the state. At the present time there is in reality no nation on earth where the government is distinctly an aristocracy or oligarchy; but a distinguishing feature of all monarchies is that the people are divided into classes, and one class is its aristocracy. Thus, in England the House of Lords is composed of persons who have inherited the title of lord from an ancestor, or had it bestowed upon them by the king or queen for some distinguished service in war, or letters, or in the affairs of state or church. In all monarchies certain persons enjoy special privileges denied to others. The idea behind such distinctions is that only a few persons are capable

of sharing in the fashioning or the administration of government; that those few are capable because of their noble birth or great wealth or wide learning or some other accident of life; that it is unsafe and unwise to grant to the great mass of mankind the right to share in the making and administration of government, although they must bear its burdens; and that unusual favors and privileges are to be enjoyed by those few who are capable.

A republic is a government by representatives chosen by the people. It is sometimes called a government by laws. These laws are made by representatives chosen by the people, and are enforced by officers chosen by the people, or appointed by other officers who have themselves been chosen by the people. The people are the source of all power in a republic. Whatever power the government has, has been given it by them. They can, in an orderly and prescribed way, lessen or increase that power when they choose. Their laws do not divide the people into classes. No one has inherited a title or special privilege from an ancestor. All persons are equal before the law. Its purpose is to give to all equality of right and opportunity. The laws are attempted to be framed so as to give all persons an equal chance to pursue whatever useful occupation they may wish. In intelligence, in manhood, in abilities, in social position they may be very unequal. But their legal rights are the same. The United States presents the best example of a republic ever known. France and Brazil, and other nations of South America, also have republican governments, but less perfect than ours.

A government directly by the people would be a pure or **primary democracy**. In such a government all the people would come together in general council and enact laws, and in the same way enforce them. There would be no representatives chosen by them to act for them, but they would act for themselves, and each would have equal powers. They would in a general council choose some of their number to

do a certain public work directed by them to be done, such as the paving of a street or the building of a bridge, and fix the terms and compensation for doing it. Such a government might be made successful and efficient in a very small nation; but in a country of extensive territory and a large population it would be impossible. A republican form of government, therefore, where laws are enacted and enforced by representatives chosen by the people to act for them, is the most efficient and just, and, in the end, the fairest and fullest expression of popular will.

3. The Progress of Government.—Through all the ages the people contended with their kings for a greater share in government. Enlightened men dislike to have all power vested in one man or a few men. They are fond of self-government or a government of their own fashioning. But among most nations in early times all authority was lodged in one person, and the people enjoyed only such powers as he chose to give them or as they forced him to yield to them. As the people have become stronger and more capable of self-government, they have forced their kings to permit them to share more and more in the affairs of government, or have replaced them with officers of their own selection. This has been the contest of all the past. It has been an issue between democracy and imperialism, and democracy has gradually won, and now in all enlightened nations the people—the whole people—are more and more admitted to be the rightful source of governmental authority. If they are to exercise such exalted powers they must be wise, and educated, and just, and virtuous.

4. Whence Come Its Powers.—The Declaration of Independence further declares that governments derive "their just powers from the consent of the governed." This is an underlying principle in America. Government here is a creation of the people. It has no authority it does not derive from the people. It is established and maintained

by the people for their own good. This consent of the people is found in the laws of the land. The laws have been made by lawmakers chosen by the people, and the people are bound to submit to the laws so made until repealed by the same law-making body, or declared by the courts to be in conflict with their Constitution and therefore not laws at all.

5. What Consent Means.—But “consent of the governed” does not mean that men can refuse to have any government at all. Government is necessary for the happiness of mankind. It does not mean that every man must consent before the government can exercise any authority. The consent of every man could never be obtained. It means that the government is the kind that the great mass of the people have established for themselves. It means that the laws passed and enforced are, for the time being, the expression of their will, and being such, it is the duty of all men to yield to its authority and support its institutions.

Questions on Chapter I.

1. Illustrate government by the home. (1a)
2. Illustrate it by the school. (1a)
3. What is government? (1a)
4. What government is discussed in this book? (1a)
5. Can you define government in one short sentence? (1a)
6. What does the Declaration of Independence say governments are for? (1)
7. What would be the result of no government? (1)
8. Into what two great classes are governments divided? (2)
9. What is an absolute monarchy? (2)
10. A limited monarchy? (2)
11. An oligarchy? (2)
12. An aristocracy? (2)
13. What is characteristic of all monarchies? (2)
14. What is a republic? (2)
15. What would be a pure or primary democracy? (2)
16. What conflict has progressed through the ages? (3)

17. Whence come the just powers of government? (4)
18. Why is government maintained? (4)
19. In what is the consent of the people expressed? (4)
20. What does "consent of the governed" not mean? (5)
21. What does it mean? (5)
22. What is the duty of all men? (5)

CHAPTER II.

*CHARTER AND COLONIAL GOVERNMENTS.

6. Government a Development.—A better understanding of our government as it is today will be reached if we trace its origin and development. Was our government the invention of a few men who met in convention in Philadelphia in 1787 and in less than five months evolved out of their own minds, as an original creation of their brain, a constitution unlike any that ever existed before, and under which, with few material changes therein, the United States have grown from about three and a half millions of people to over one hundred millions, and have become one of the greatest nations of all time? No. Government is a growth. It is a development, a result of forces that have small beginnings, but which work on and on through centuries, and even thousands of years. Constitutions are a growth as well. "Through all the ages," from the time the first English settlers started to America in search of civil and religious liberty, "one increasing purpose runs," and that purpose has been to establish a government that would be strong enough to maintain justice, order and peace, and at the same time make sure and permanent the civil and religious liberties of the people. In tracing that growth we shall see how our republican form of government has gradually unfolded; how

*NOTE.—In this chapter the author has followed the plan of development of John Fiske in his excellent "Civil Government of the United States," published by Houghton, Mifflin & Co., Boston.

it began in small concessions from the English kings, and how the people in America as they seized hold of each conceded right held it within their grasp, and more and more came to consider themselves the source of all governmental power; and how the charters granted by the kings, as the people's bills of rights during the colonial days, were later enlarged into constitutions, and the colonies into states; and how those states were consolidated into a nation, and those constitutions used as patterns for the construction of a Constitution or chart for the authority of that nation.

7. The Charters.—In a republic the Constitution is the fundamental or organic law of the nation or a state. It is its chart, by which all its legislative or other acts are bounded. The germ of a written constitution existed a long time ago. We are indebted to the ancient Romans for it. It originated in a custom among them of regulating things by contracts. In this country business and all affairs of life are regulated by contracts or agreements, but we owe that idea to the Romans. "It was after they had become thoroughly familiar with the idea of a contract," says the learned John Fiske in his *Civil Government of the United States*, "that the practice grew up of granting written charters to towns or other corporate bodies." These charters were a kind of contract. For a certain amount of money to be paid or a certain number of soldiers or ships to be furnished, or for some other valuable thing, certain privileges or liberties were granted to the town by the king or feudal lord. What he granted to the town or company he expressed in a written paper, signed by himself, called a charter. The people sometimes called them "the title-deeds of their liberties." And that is just what a constitution is—it is the charter of the people's rights. From the idea behind these town charters came the Magna Charta—the Great Charter—of English liberty, in 1215, in which King John was forced to grant "to an accused the right to a trial by a jury of his own peers" and to concede to his barons

many other privileges and liberties. From these town charters, also, came the idea which in later times prevailed in England for nearly two hundred years of granting to settlements in the New World certain privileges. A charter then came to mean "a grant made by the sovereign either to the whole people or to a portion of them, securing to them the enjoyment of certain rights."

8. The First Charter.—In 1606 two great joint stock companies were organized in England, the London Company and the Plymouth Company, for the purpose of establishing settlements in North America. To the London Company the king, James I., granted the coast between latitudes 34° and 38° north, or between the southeastern corner of what is now North Carolina and the mouth of the Potomac. The grant was to include all the territory between these two latitudes westward to the Pacific ocean. It therefore was a belt or zone four degrees wide from sea to sea. To the Plymouth Company he granted the coast between latitudes 41° and 45° , or from about the site of the present city of New York to the southern boundary of New Brunswick. It, too, included all the territory from the Atlantic to the Pacific. The zone which lay between these two was open to both companies, with the exception that neither should make a settlement within 100 miles of one already made by the other. To these companies the king gave one charter, in which he declared "that all persons, being our subjects, which shall go and inhabit within the said territory, and their children and posterity which shall happen to be born within any of the limits thereof, shall have and enjoy all liberties, franchises and immunities of free denizens and natural subjects within any of our other dominions, to all intents and purposes as if they had been abiding and born within our realm of England." By this charter persons born within any of the three zones were given the same political rights as English freemen born in England. Upon these rights

the colonists in America ever afterwards insisted, and when George III., in 1765-1775, undertook to take those rights from them, they resisted, first by solemn protest often repeated, and later, when protest had failed and he tried to force them to yield to his violation of their charter rights, by going to war with him.

9. The Settlement in Virginia.—The first settlement was made by the London Company, and in the lower belt, on the James River in Virginia, in 1607; and as the charter guaranteed to them the same privileges as were enjoyed by freemen of England, trial by jury was secured to the colonists, and lands descended in Virginia as they did in England, that is, to the oldest son. In 1619 the colonists in Virginia obtained a modification of their charter by which a representative government was, in part, secured. By the terms of the charter the London Company was to be controlled by a council in England appointed by the king, and this council in turn appointed a governor for the colony and a council of thirteen to reside in the colony, and now by this amendment was added a general assembly composed of two burgesses from each settlement or borough, elected by the inhabitants. The people supposed they were founding towns, and so they called each member of their assembly a burgess, that is, a representative of a borough or town, and they called the general assembly of their representatives the House of Burgesses; but as the years went by and no important towns were built, but the inhabitants became more and more planters or farmers, counties were organized, and thereafter the Burgesses sat for counties. Nevertheless, the name of their assembly continued to be known as the House of Burgesses until a new code of laws was established during the Revolutionary War. It was a truly representative body, and the first legislative body that ever sat in America, its first session being at Jamestown, July 30, 1619. It controlled the expenditure of public money raised by taxation, and determined the amount of general taxes to be annually

raised for the colony. It was the lower house of the legislative assembly. "The Governor always had a Council to advise with him and assist him in the execution of his duties, in imitation of the King's Privy Council in England, and this Council took part in the work of legislation, and thus sat as an upper house, with more or less power of amending the acts" of the House of Burgesses, and it and the governor were considered as representing the king and as expressing his wishes, and hence his will was always potent, but nevertheless the Burgesses never ceased to insist on the terms of their charter which gave them the same political privileges and liberties Englishmen enjoyed at home.

It is necessary to note that the Council were never elected by the people, but after a time were appointed by the Governor; and that the Governor was at first appointed by the London Company, but later by the king, and hence thereafter Virginia was called a "Crown Colony," since the Governor and Council were supposed to speak the will of the crown or king of England.

10. In Massachusetts.—The next settlement was in Massachusetts, in the northern zone, and its colonial government was also organized in part under the charter granted to the London and Plymouth companies, but more largely under a charter granted in 1629 to the "Governor and Company of Massachusetts Bay in New England." The freemen of this company were to hold a meeting four times a year and were empowered to elect a governor and a council of eighteen assistants, who were to hold their meetings each month. Although the company was organized in London, nothing was said as to the place where these meetings were to be held, and "accordingly after a few months the company transferred itself and its charter to New England, in order that it might carry out its intentions with as little interference as possible on the part of the king." After their arrival in Massachusetts the number of freemen increased so fast

that it was impossible to have a primary assembly of all the freemen, and so the freemen of each town or township chose representatives to act for them, and a representative assembly was thus originated. These representatives were called Deputies. They did not sit for counties, as in Virginia, but for towns or townships, and so from that day to this the "town meeting" has been an important part of New England government. These Deputies at first sat in the same chamber with the Council of Assistants and with them constituted the legislative body, but in 1644 the legislature was divided into two chambers, the Deputies forming the lower house, while the Assistants, who were also called Magistrates, composed the upper house. This legislative body was called the General Court, a name the legislature of Massachusetts bears to this day. It was not only the legislative, but at the first the highest judicial body of the colony, and hence the reason for calling it the General Court.

It will be seen that this government was practically an independent republic. The freemen elected their Governor and their Deputies, and the Magistrates were nominated by the General Court and chosen by the people. A people who can make laws for themselves are independent, and if those laws are made by representatives chosen by themselves, and enforced by governors or other officers also chosen by themselves, their government is a republic. In Massachusetts the king could impose no effective checks upon the legislature except by repealing the charter, or by appointing a Governor and Council himself, and backing them up with an army if resisted. Those things he often threatened to do, and both he did fifty or sixty years after the charter to the Massachusetts Bay Company had been granted, for the General Court permitted only members of the Puritan or Congregational Church to vote, a thing very distasteful to the king. So in 1684 he annulled the charter, and placed the colony under a military viceroy; but eight years later, or in

1692, a new charter was sent over, under which the people were allowed to elect representatives to the General Court, as before, but the Governor thereafter was to be appointed by the king, and all acts of the General Court were to be sent to the king for his approval. Thus the government of Massachusetts became similar to that of Virginia, and remained so down to the Revolution, and hence both of these great colonies were thereafter known as "Crown Colonies," because they were under the king's immediate control. But in no crown colony, or in any other, were the people ever taxed to support the king or the English government. In all the colonies taxes originated with that part of the legislature usually denominated "the assembly," whose members were chosen by the people, and those assemblies determined what things should be taxed, and how much, and for what purposes the taxes should be expended.

New Hampshire, which at the first was practically a part of Massachusetts, was in 1679 made a crown colony.

11. Proprietary Colonies.—In 1624 the subservient courts of England, at the request of the king, annulled the charter of the London Company, and in 1635 the Plymouth Company surrendered its charter. . This proved the downfall of those companies, and after that the king gave lands in America, especially those lying within the middle zone, to his favorites. He thus gave Maryland to Lord Baltimore, and Pennsylvania and Delaware to William Penn.

The charter of Maryland invested Lord Baltimore with very extensive privileges and powers over the land and colonists. He "was made absolute lord of the land and waters, could erect towns, cities and ports, make war or peace, levy tolls and duties, establish courts, appoint judges and other civil officers, and pardon offenders." For this extensive grant he was to pay the king a small tribute—two Indian arrows yearly and one-fifth the gold and silver mined. But he could make laws only "with the assent of the freemen of

the province." And the king further bound himself and his successors to lay no taxes or customs upon the people of the province. He gave Baltimore the title of Lord Proprietary of Maryland, and this title and these powers were made hereditary in his family. The government was carried on by a governor and a legislature of two houses. The lord proprietary appointed the governor and the members of the upper house, but the members of the lower house here, as in Virginia and Massachusetts, were chosen by the people, "and in accordance with the time-honored English custom all taxation must originate in this lower house."

The proprietary government of Pennsylvania was somewhat similar to Maryland's. Penn was the lord proprietary, and the office was hereditary in the Penn family, and this officer appointed one governor for both Pennsylvania and Delaware, but each had its own legislature chosen by the people. This legislature had only one house. The council, which was appointed by the proprietary lord, advised the governor and aided him in governing the province, but took no part in legislation.

These two colonies were called proprietary colonies because the lands were granted, not to a company or the settlers, but to a feudal lord, who appointed their governors and exercised almost kingly authority over them.

12. New York and New Jersey.—There were also other crown colonies besides Virginia, Massachusetts and New Hampshire. The principal ones were New York, New Jersey, the Carolinas and Georgia. New Netherland was first settled by the Dutch, but in 1664 the English conquered it from them, and the king of England granted it to his brother, the Duke of York, and thus it became a proprietary colony, and took the name of New York, but in 1685 this same duke ascended the throne as James II., and so New York thereby became a crown colony, its governors from that time on being appointed by the king. The English had

also conquered from the Dutch the country lying between the Hudson and Delaware, and it too was granted to the Duke of York, who in turn granted it to two of his friends, Berkeley and Carteret, and thus marked off the colony of New Jersey. It thus became for a time a proprietary colony, sometimes under one government, sometimes divided between two, but in 1702 the rights of the lords proprietary were surrendered to the king, and thereafter New Jersey was a crown colony.

13. In the Carolinas and Georgia.—The provinces of North and South Carolina and Georgia were carved out of territory once embraced within Virginia. There were among their settlers, especially in South Carolina, some French Huguenots, but the government of all the provinces was English. At first this was proprietary, but proprietary governments were not popular in America. The proprietary lords usually resided in England, and seldom visited their colonies. They looked upon them as sources of personal income, and so long as the amounts demanded were peaceably paid they took little interest in the settlers or their affairs. They often appointed worthless favorites to office in the colonies for whose support the colonists were taxed, and this became a source of constant contention between the inhabitants and their lords proprietary. So these proprietary charters were after awhile surrendered to the king, and these colonies then took on the form of government which Virginia had. That is, their governors were appointed by the king, and hence they too became crown colonies. But there was yet another kind.

14. The Republican Colonies.—Connecticut and Rhode Island were early settled by persons from Massachusetts and it was very natural that their governments were like that of Massachusetts, as those of the Carolinas were similar to that of Virginia. There the governors, councils and assemblies were elected by the people, just as they had been by

the freemen of each town in the early days of Massachusetts. Thus they made their own governments, and in 1662 these were confirmed by charters from the king, and these charters were never repealed, but so thoroughly republican were these governments that they remained unchanged until long after the Revolution.

15. Marked Features of Colonial Governments.—Thus we have set forth the three kinds of government that obtained for all the years before the Revolution among the thirteen colonies that first formed the United States of America. These were: first, crown colonies, whose governors the king appointed, and whose laws were subject to his approval, although enacted by a legislature, one house of which was appointed by the governor and the other chosen by the people; second, proprietary colonies, whose governors and councils were appointed by a hereditary lord, but whose laws were enacted by legislatures chosen by the people; and, third, republican colonies, whose governors, councilors and legislators were chosen by the people. The governments of all these existed under charters from the king, and those charters always fixed a boundary to the king's authority, and also to the people's rights. We shall see further on how the people of the various colonies enlarged the governments which had grown up under these charters into independent States existing under written constitutions, and then organized those States into a nation called the United States of America.

Questions on Chapter II.

1. Is government an invention or a development? (6)
2. What purpose runs through American history? (6)
3. In what did written constitutions originate? (7)
4. Who granted charters and what for? (7)
5. What did a charter come to mean? (7)
6. To what companies were the first American charters granted? (8)
7. What was granted to the London Company? (8)

8. What to the Plymouth Company? (8)
9. What about the zone lying between these two? (8)
10. What guaranty did this charter contain? (8)
11. What rights did America obtain by that charter? (8)
12. What was the first settlement? (9)
13. What two things were secured through their charter? (9)
14. How was Virginia to be governed under their charter? (9)
15. What great privilege came as a result of a modification of the charter? (9)
16. Why did the people call their assembly the House of Burgesses? (9)
17. How long did the House of Burgesses last? (9)
18. What was the House of Burgesses? (9)
19. What did it always control and determine? (9)
20. Where was the next settlement? (10)
21. Under what charter? (10)
22. How were the governor and council chosen? (10)
23. Why did they abandon their primary assembly? (10)
24. What is said about a primary democracy in section 2?
25. What did the Massachusetts freemen substitute for their primary assembly? (10)
26. What did the deputies represent? (10)
27. What is said about town meetings? (10)
28. How was the legislature divided? (10)
29. What was it called and why? (10)
30. How were the deputies, assistants and governor elected? (10)
31. What kind of government was this? (10)
32. How could the king thwart the legislature? (10)
33. What changes did the new charter make? (10)
34. What kind of colony did Massachusetts now become? (10)
35. What were the proprietary colonies? (11)
36. What powers did the king give to Baltimore? (11)
37. How was the Maryland legislature composed and chosen? (11)
38. Where did taxes originate in Maryland? (11)
39. What is said of Pennsylvania and Delaware? (11)
40. Why were these called proprietary colonies? (11)
41. What other crown colonies were there? (12)
42. What is said of New York? Of New Jersey? (12)
43. Of Georgia and the Carolinas? (13)
44. What was the character of their government and what is said of lords proprietary? (13)
45. Describe the republican colonies. (14)

46. State the difference between the three classes of colonies. (15)
47. What purpose did the charter serve? (15)
48. Into what were charter governments enlarged? (15)

CHAPTER III.

THE RISE OF THE AMERICAN STATES AND THE UNION.

16. The Breaking Up of Colonial Governments.—In each colony the people were taxed for the support of the colonial government, and the assemblies chosen by them had almost from the beginning determined how much that tax should be and for what purposes the money should be used. They would not permit their governor or their king to determine those things for them. Their charters guaranteed them the right to determine those things for themselves. They claimed that no taxes could be imposed on English freemen anywhere except by representatives chosen by the people. No colony had ever had a representative in the Parliament of England, and hence the colonies always insisted that neither the king nor Parliament had any authority to impose taxes on them. "Taxation without representation is intolerable and unjust," they said; and this claim went undisputed until about 1765, and then when Parliament began to enact laws taxing them, the assemblies disputed its authority, and called on the people not to pay the taxes. Thus began a contest over the authority of Parliament to tax the colonies which lasted for ten years and culminated in the Revolutionary War.

A law enacted by the Parliament fixed the salaries of the colonial governors and judges, and to pay these salaries imposed taxes on certain articles shipped into America, among others a tax of three pence a pound on tea. The king appointed commissioners at the various ports to collect the taxes as the ships came in. To aid the commissioners and to suppress any resistance among the people, armies were

brought over from England, and quartered in the principal towns, and the taxes were also to be used in supporting these armies. The tax was small, and it was not its amount to which the people objected, but it was a principle for which they contended, and that was that they could not be taxed at all without their consent. For Parliament to impose any tax whatever would be to violate their charters. A free people will not be forced by armies or soldiers from across three thousand miles of sea to tamely and quietly submit to a persistent violation of their constitutional rights.

In November, 1773, three ships loaded with tea sailed into Boston harbor. A hundred citizens or more boarded them and threw the tea into the sea. This has ever since been known as the "Boston Tea Party." The purpose was to give notice that the colony would resist even by force any attempt of the king and Parliament to violate their charter. They would not be compelled to pay taxes which had not been imposed by their own representatives, nor to support by taxation officers whom they had not chosen or armies quartered on them without their consent. But their act was a defiance of Parliament. They had disobeyed its law, and disputed its authority; force had been used, rebellion had begun, and independence would soon follow unless Boston were subdued. All parties in England agreed that they must be punished. It was not thought the other colonies, or the other towns in Massachusetts, would support Boston in its bold defiance of Parliament and the king. But they did; and we must now trace the steps by which united action was brought about.

16a. Conventions.—In Virginia and Massachusetts the action of the legislative assemblies in disputing Parliament's right to tax the colonies and to force them to yield to its authority, brought down on them the resentment of the governors, who retaliated by dissolving the assemblies. "During the few years preceding the Revolution, the assem-

blies were so often dissolved by the governors that it became necessary for the people to devise some new way of getting their representatives together to act for the colonies." New assemblies, to which the people chose delegates or representatives, were thus brought into existence. At first they were called conventions. In Massachusetts and one or two other colonies they were called "the provincial congress." Through them in time the people established new legislatures of their own, and in the end complete governments of their own. The way this was done will be illustrated by setting forth what went on in Virginia.

17. Provisional Governments.—When the House of Burgesses passed resolutions making the cause of Massachusetts their own, and calling on all the colonies to do the same, the governor dissolved the Assembly. A few of the bolder members, like Thomas Jefferson, Patrick Henry and Richard Henry Lee, immediately met at a hotel and agreed upon a line of action, and having made that known to the people they were promptly re-elected. On re-assembling, the House of Burgesses was again dissolved by the governor, for taking action in opposition to the tax laws and the other oppressive acts of the king. These same patriots, now joined by others, again assembled at the hotel and again agreed upon a line of action for the colony. They called on all the counties to send delegates to a convention to be held at Williamsburg, the capital of the colony. That was done, and the convention began to devise a plan of government that would exclude the king and Parliament from exercising any authority in the colony. That was a radical movement; a movement towards independence. The people of Virginia were almost unanimously for it, but one colony could not alone succeed in it. It could be made to succeed only by united action among all the colonies. Then the members of the convention opened their eyes wider, and saw that the same desire for united action was stirring the other colonies,

and hence they elected delegates to a Continental Congress to be held in Philadelphia in September, 1774.

But the movement in Virginia went on. In the spring of 1775, the governor, Lord Dunmore, who had been appointed by the king, was, by an armed force under Patrick Henry, driven from his palace, and took refuge on a war ship, having, however, before his flight convened the House of Burgesses, which, after having called another session of the convention and thereby lent authority to its existence, adjourned in July, 1775, and this was the end of the House of Burgesses. It never afterwards held another session. The convention called by it appointed a "Committee of Safety," consisting of eleven distinguished men, to take charge of the executive affairs of the colony. Dunmore, after being defeated in battle, returned to England, and so the convention at its next session in May adopted a bill of rights and a written constitution—the first adopted in America. This constitution provided for: (1) a legislative body consisting of a house of delegates and a senate, to be elected by the owners of land; and (2) a governor; (3) a council of eight members; and (4) trial courts and an appellate court, all to be chosen by the Assembly, or this legislative body. Patrick Henry was chosen the first governor. Thus Virginia became an independent republic. There were no more governors appointed by the king. Henceforth the people would govern themselves, under a constitution and laws of their own making.

18. The Rise of the States.—In Massachusetts, New York and other colonies the governors appointed by the king were put aside in much the same way as in Virginia. Committees of safety were appointed to manage the affairs of the colony until a convention chosen by the people met and framed a written constitution, under which the people chose their own legislature and governor and provided for their own courts. The word "colony" now disappeared. Each began to call

itself a "State" or "Commonwealth," and from that time on they have been so designated. An independent republic is not a colony; it is a commonwealth, or a state.

19. The Formation of the Union.—But the successful breaking away of the colonies from the dominion of the king left each free to go its own way. There was no central authority to bind and hold them together. Each was free to defy the king single-handed and alone, and to try to make a separate nation of itself, absolutely independent of all the other colonies and of all the rest of the world; or it could if the other colonies were willing unite with them in winning their independence and in a permanent union. The colonies were quick to see that they could succeed in their war only by uniting. Their interests were the same, their grievances much the same, their inhabitants very much alike in speech, religion, blood and love of liberty, and England was powerful. "United we stand, divided we fall," they said. The same men who led the people into resisting the king and Parliament also led them towards forming a union. To trace the various steps it will be necessary to go back a little.

20. The First Attempt.—"In 1754, just as the final struggle between the French and English in America was beginning, Benjamin Franklin brought forward his famous plan for a federal union," in order that the colonies might act in concert in that coming struggle with the French; and that plan was laid before a congress held in Albany, New York. Seven colonies were represented at that congress, by twenty-five delegates, who unanimously assented to Franklin's plan, which was that the common interests of the colonies should be cared for by a congress of delegates chosen by their several assemblies, and by a "president-general" appointed and paid by the English king, who was to have power to veto any act of the proposed congress. The king and his ministers had suggested the holding of this congress, but the plan was rejected by them because they thought it gave too much

power to the congress, and the colonial assemblies rejected it because they thought it gave too much power to the president-general. This was the first time the word "congress" was applied to an American body; and while no union was formed, ideas of united action were suggested by the attempt which were not forgotten as the troubles of the colonies thickened during the next twenty and even thirty-five years.

21. The Colonial Congress.—Soon after Parliament had in 1765 passed the hateful Stamp Act, which was the first real attempt by it to impose taxes on the colonies, it was proposed in Boston, under the lead of James Otis, that a general congress of all the colonies be held, to be composed of delegates from each colony chosen without leave of the king. South Carolina was the first to respond to that call. In response to it there was held in New York, on October 7, 1765, what has since been known, for want of a better name, as "the Colonial Congress." It met before some of the colonies had received notice of the call, but nevertheless delegates from nine colonies were present. Nothing, however, was done beyond the drawing up of a declaration of rights in which it was declared that the American colonies would not consent to be taxed except by their own representatives.

22. The Continental Congress.—In the spring of 1773, the Virginia House of Burgesses, "sensible that the most urgent of all measures was that of coming to an understanding with all the colonies, to consider the British claims as a common cause, and to produce a unity of action," devised a plan for "committees of correspondence" between the colonies. Out of this action grew the Continental Congress. A "committee of correspondence," of which Peyton Randolph, the Speaker of the Burgesses, was chairman, was appointed, which prepared a circular letter to the speakers of the assemblies of the other colonies. The other colonies eagerly fell in with the plan, and thus each legislative body was kept constantly informed of what was going on in all the other

colonies. By this means a mutual understanding was brought about. United action was the result. From that time on the colonies more and more acted together.

For the purpose of punishing Boston for the "Tea Party" and the open defiance of its authority (spoken of in section 16), Parliament, in the spring of 1774, undertook to shut up the Boston port against all ships, suspended the charter of Massachusetts, and required the chief offenders to be sent to England for trial. These were tyrannical acts. They were intended not only to suspend all charter rights—the main right of the people to control, through their chosen representatives, the internal affairs of the colony—but to compel them, by destroying their trade and by other acts of oppression, to submit to being governed according to the unrestricted will of Parliament and the king. The patriots of Massachusetts, led on by Samuel Adams, determined to resist. They called upon the other colonies to stand with them. The call was heard. The response was general and spontaneous.

In Virginia the leading patriots determined to "stand in line with Massachusetts," and their committee of correspondence proposed to like committees in the other colonies "to appoint deputies to meet in congress annually, at such place as should be convenient." The other colonies acceded to the plan, and Philadelphia was chosen as the place, and September 5, 1774, as the time, of the first meeting. Every colony except two was represented. The delegates or "deputies" were men of large abilities. George Washington was one of them. They drew up a memorial to the king and people of Great Britain for a radical change of policy towards the colonies. It was so earnest, so moderate in tone, so fair in its demands for justice and so outspoken in its quiet determination, that many friends for the colonies were gained by it, not only in Parliament, but on both sides of the sea. The Congress remained in session seven weeks, and then ad-

journed to meet again in May, 1775, if their prayer for redress failed. Their well expressed memorial did not change the mad course of Parliament or the haughty king, and so on reassembling the Congress organized the Continental Army, elected George Washington its commander, and authorized him to use it in defense of any colony which might be attacked by the king's troops. It was called "continental" because the desire was that every colony on the continent would send delegates to it, and also to distinguish it from "provincial congresses" or conventions which had lately been held in some of the colonies. It was not a parliament; it was a congress, that is, an assembly composed of delegates of the States; for Thomas Jefferson tells us that they came with "instructions very temperately and properly expressed" which had been given them by the convention or legislature choosing them, and these instructions defined and limited their authority. They were expected to obey them, and to undertake to do nothing that they did not authorize them to do.

After its session in 1775, to which all the thirteen colonies sent delegates, the Continental Congress became a continuous body until it became apparent that the new Constitution providing for the Congress now existing in Washington would be adopted, and then in 1788 it went out of existence, having died of old age.

23. Independence.—On July 4, 1776, the Continental Congress proclaimed the Declaration of Independence, in which it declared that all political connection between "these United Colonies" and Great Britain "is and ought to be totally dissolved." This declaration would be made good if the colonies won the war then waging. If they won, they would in fact be "free and independent States." They did win, and hence "all political connection" with Great Britain was at an end.

24. National Unity.—That political connection had given them a national unity. They had all been American colonies in subjection to the English king, and his admitted authority over each had been the tie that bound them together as a part of a great nation. But that bond was now broken, that authority they had thrown off, and now they had no "political connection" with any other nation or with each other. They were much alike, they had locked arms and were now fighting their common king, and meant to live under laws of their own making, but they were not united into a nation. They were not only "free and independent States," but they were independent of each other, separate from each other. They had come together in Continental Congress for the purpose of fighting the war. That alone made their united efforts a mere league, which could be dissolved when the war was over. But if they were to become a nation they must unite with each other permanently, must form a political bond that would bind them together, not only for the war, but for all time. They, therefore, undertook to form a "perpetual union between the States," but they were long in doing it. They tried it through two written constitutions. The first was the Articles of Confederation.

25. The Articles of Confederation.—Four days after the committee was appointed to prepare the Declaration of Independence, another was named to frame "articles of confederation and perpetual union" between the thirteen States, but it was November 15, 1777, before the Continental Congress agreed upon what those articles should contain. They were to be binding on all the States when the legislative assembly of each of the thirteen authorized its delegates in Congress to sign the Articles on behalf of their State. This was not done until the first of March, 1781, and even then it was found that "the perpetual union" the Articles provided for

was a rope of sand. They created a mere confederacy between the States and not a real government.

They provided for a Congress to consist of one house and to be composed of not more than seven nor less than two delegates from each State, to be annually chosen as the legislature thereof should direct. But the delegates voted by States and not as individuals, that is, each State had one vote, and how that vote was to be cast was decided by a majority of its delegates, and it took the vote of nine States to enact a law or pass a bill. The Articles provided for no President, but for only a "Committee of the States," to consist of one member from each State, to act for the Confederacy during the recesses of Congress. The Congress had no authority to levy taxes or impost duties. Money to carry on the war and to pay the other expenses of the Confederacy was to be furnished by the several States, in proportion to the amount of land sold or surveyed for private persons within each State. The Congress determined each State's share, and the legislature thereof was required to levy a tax on its inhabitants for that amount, but if a State refused to make the levy the Congress had no way to punish it or to collect the tax. The Congress was given power to enact laws on many subjects, but if these were violated the Confederacy had no power to punish the violators, for the Articles provided for no courts. The Congress had contracted a very large debt to carry on the war, and when it called on the States to furnish it money to pay this, several of them refused, and it was without power to compel them to pay. Therefore, an amendment was proposed, which would give Congress authority to impose and collect an impost or tariff tax of five per cent. But the Articles themselves provided that they could be amended only by the vote of every State, and Rhode Island held back. So the Congress became a thing without power. It was not a sovereign, for no government is a sovereignty that cannot raise taxes for its own support. It could not pay its debts,

and had no authority to force the collection of money for any purpose, and no authority to punish any State which failed to keep faith with the rest. The "Continental money" which it issued became practically worthless, and the authority of the Confederacy was sneered at and derided on every hand. Its power began to wane immediately on the restoration of peace, and continued to do so until it began to look as if the union, which the Articles had said should be perpetual, would fall to pieces.

26. A Second Constitution is Framed.—It was apparent that a new constitution must be framed or a union of the States abandoned. As a result, an attempt to "form a more perfect union" was begun. In addition to the utter failure of the Confederacy and of the proposal to amend and patch up the Articles of Confederation, two or three other things united to hasten on that attempt and to fasten public attention on the necessity of a union strong enough to stand alone.

The **first** of these was the Shays Rebellion in Massachusetts in the fall of 1786. That State as a result of the war was heavily in debt, as all the others were, and the taxes it levied on land were excessive, and the homes of the people were being sold, under orders of the courts, not only to pay taxes but their private debts as well. Daniel Shays, late a captain in the Continental Army, rallied a large number of farmers and citizens of small means in the western part of the State, and openly defied the laws and resisted the authority of the courts. For some time neither the sheriff nor the governor was strong enough to put down these rebels, and their success alarmed the friends of order throughout the land and hastened on the movement for a government strong enough to preserve order.

The **other** was a conflict in the tariff laws made by the several States. Under the Articles of Confederation each State could levy such impost duties as it pleased upon goods shipped to it directly from foreign countries, but could not

impose any duties upon goods shipped to it from other States. Virginia laid duties on certain foreign articles, but Maryland did not. So it came about that goods were landed in Maryland free of duty, and then sent across the Potomac or Chesapeake into Virginia, free of duty again, because now they came from a sister State. Thus the tariff laws of Virginia were dodged and made inoperative. To remedy this condition, the legislatures of both States in 1785 appointed commissioners to meet and adjust their mutual rights. But when these came together it was found that a similar condition might arise at any time between Pennsylvania, Delaware and New Jersey, and therefore one of them, James Madison, who had for some time been planning for a convention to devise a new scheme of union, induced the commissioners to agree to ask their respective legislatures to invite these three States to also send commissioners to a convention to be held in Annapolis in September, 1786. But when Madison returned home he induced Virginia to extend the invitation so as to include all the States. Alexander Hamilton stirred up New York to send delegates also, but before the time came for the convention Maryland drew back. The convention was held at Annapolis at the appointed time, but there were delegates present from only five States—Virginia, New York, New Jersey, Pennsylvania and Delaware. They did little except to formally recommend to all the States to send delegates to another convention to be held in Philadelphia in May, 1787, to “devise such measures as would render the Articles of Confederation adequate to the exigencies of the Union.”

And now George Washington steps forward again in behalf of his country. In an autograph letter to Madison he expressed the earnest wish that “Virginia would take the lead in promoting the great and arduous work of reconstruction.” “When Virginia lifted the golden roll of her delegates” and showed the name of George Washington at the head of the column, the whole country thrilled with a new hope and a

new inspiration. Pennsylvania headed her list with the name of the great Benjamin Franklin, and New York sent Hamilton. When the convention met in May, 1787, there were 55 delegates present from 12 States, Rhode Island alone holding aloof. George Washington was elected president, and his name appears upon the Constitution it framed as its first signer. This convention, known ever afterward as the **Constitutional Convention**, represented the wisdom, the wealth, the education, the conservatism and the patriotism of the States. Possibly no abler or wiser body of men ever met in legislative council in the wide world. The local jealousies and the conflicting interests of the several States contended with each other, and the fear that a government might be formed which would become an unmanageable tyrant made the delegates hesitant and cautious. Often they were on the point of dissolving without having come to any understanding, but then, as at all other times, their good sense and patriotism prevailed, and before adjournment they framed a constitution which has since been the inspiration and admiration of liberty-loving men everywhere. They were wiser than they knew. The federal Union, formally inaugurated as a result of their work, has become the mightiest nation in the world, and yet, although there have been seventeen amendments, there have really been few fundamental changes in the Constitution they framed even to this day.

27. How the Constitution Was Framed.—James Madison has justly been called the "Father of the Constitution," for it was largely written by him, but all the delegates had some part in framing it, notably Edmund Randolph of Virginia, Hamilton of New York, Dickinson of New Jersey, James Wilson and Franklin of Pennsylvania, Charles Pinckney of South Carolina and Roger Sherman of Connecticut. The Virginia delegates had met in caucus and agreed upon a plan of union, and this plan was brought forward on behalf of Virginia by Edmund Randolph, afterwards the first Attor-

ney-General of the United States. Other delegates, among them Charles Pinckney of South Carolina and Alexander Hamilton of New York, brought forward other plans, but it was the Virginia plan, which had really been written by Madison, that became the basis for the instrument finally agreed upon. But the convention remained in session until September, and every clause in the Virginia plan was considered by sub-committees and in the committee of the whole, and some of them were stricken out and others substituted in their stead, and others modified. So that the instrument as finally submitted for ratification cannot be said to be the work of one man, nor of one delegation, but of all the delegates and of all the twelve States represented.

28. How Adopted.—The Constitution provided that “the ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying it,” and March 4, 1789, was fixed as the day for commencing the operations of government under it. It was meant to supersede the Articles of Confederation. It was, therefore, sent by the Constitutional Convention to the Continental Congress, eighteen of whose members had been members of the convention which framed it. The Continental Congress directed it to “be transmitted to the several legislatures in order to be submitted to a convention of delegates chosen in each State by the people thereof.” It was thus really submitted to the people, for in choosing delegates to their conventions the people in each State decided between candidates who had declared themselves either for or against its adoption. Eleven States through their conventions had adopted it by July 26, 1788. Neither North Carolina (Nov. 21, 1789) nor Rhode Island (May 29, 1790) adopted it until after George Washington had been inaugurated the first President (April 30, 1789), and hence the Government’s authority did not extend to those States until they had done so.

The clause establishing the Constitution only "between the States so ratifying it" was its salvation. Without that clause it could never have been adopted, and the Union would have collapsed. It had been impossible to amend the Articles of Confederation, because that instrument required the unanimous consent of all the States, and Rhode Island had declined to give its consent, and now the same State had not only refused to send delegates to the Constitutional Convention, but held back in the ratification of the Constitution until after the new government was fairly inaugurated. Besides, it was only after a long and painful contest that Virginia and New York were brought around to ratify it. Had it required the adoption of every State it is likely that several would have rejected it. To have declared it in force over all as soon as nine had adopted it, would have been unjust to the State refusing its assent and would, therefore, also have defeated it. The provision that it was not to be considered established until nine States adopted it, and then only "between those so ratifying it," made its adoption certain, because it was seen from the beginning that as soon as nine ratified it the others would fall into line and do the same.

The fact that the Continental Congress had directed the Constitution to be submitted to the States for ratification, shut off any right on its part to question the authority of the new Constitution after it had been adopted. It, therefore, as soon as it became apparent that enough States would ratify it to establish a government thereunder, adjourned never to meet again.

Thus we have in this and the preceding chapter traced the progress of the Americans towards republican government from the time the first settlers received their charters from the hands of English kings to the adoption of the "Constitution of the United States of America." In the succeeding chapters will be explained the principal features of that Constitution and the various parts of the Government.

And here it will be well to remember that the Union or "political connection" which resulted from the adoption of the Constitution was formed by those people, and those only, that lived within the eleven degrees of latitude mentioned in the first charter to the London and Plymouth Companies, as described in the first few sections of the preceding chapter; and also that a written constitution, although adopted by the people as their fundamental law and framed by delegates chosen by them, is an enlargement of the idea contained in a charter, and that a charter is the outgrowth of the idea that is contained in a contract—that is, that it is a chart for the law-maker and the courts, and is an agreement which both they and the people are bound by and must keep.

Questions on Chapter III.

1. On what right did the colonists ever insist? (16)
2. What was the effect of trying to tax them? (16)
3. What was the effect of their resentment? (16)
- 3a. Describe the Boston "Tea Party," its purpose, and meaning. (16)
4. After their assemblies were dissolved how did the people devise to carry on their governments? (16a)
5. Explain fully the origin of provisional government in Virginia. (17)
6. What were the four distinctive provisions of the Virginia Constitution? (17)
7. What is said of provisional government in other States? (18)
8. By what name did colonies now begin to be called? (18)
9. What was the effect of breaking away from the king, and what the need of union? (19)
10. What was the first attempt at union? (20)
11. What is said of the Colonial Congress? (21)
12. Explain fully the origin and work of the "Committees of Correspondence." (22)
13. What is said of the Continental Congress? (22)
14. What was the effect of the Declaration of Independence? (23)
15. What had been the tie that bound the colonies together? (24)
16. What did they try to substitute for that "political connection?" (24)
17. What was the first written constitution? (24)

18. When were they to be binding on all the States? (25)
19. Did they create a real government? (25)
20. Explain fully why they did not. (25)
21. How did one small State balk the union? (25)
22. Why was not the Confederacy a sovereignty? - (25)
23. What was next attempted? (26)
24. Describe the first cause that hastened on the attempt. (26)
25. Describe each step of the second cause. (26)
26. What great men figured in the movement? (26)
27. What did Washington do? (26)
28. What is said of the Convention's work? (26)
29. Describe how the Constitution was framed. (27)
30. How was it ratified? (28)
31. Did the people have anything to say about its adoption? How?
(28)
32. What little clause probably secured its adoption and why? (28)

CHAPTER IV.

THE FUNDAMENTAL LAW.

29. The Authority of the Constitution.—The Constitution is the fundamental law of the United States. It is the supreme law of the land. All laws of Congress or of any State in conflict with it are void, and every officer of the Union and all important officers of the States are required before entering into office to take an oath to support it. However much a new law may be desired by the people, if it is in conflict with the Constitution it must fail, and the only way it can be enacted so as to be legally enforced is by first changing the Constitution itself, which can be done only in the way designated by it. It is a short instrument, covering less than twenty pages of an ordinary book, but it states what are the powers of the Union over its citizens and over the States, and its general duties towards them, and their rights thereunder. The Union's powers are enumerated by it, and in return for the surrender by the people and the States of these powers to the Union, there is imposed on the Union the duty of guar-

anteeing to each State a republican form of government and the preservation of certain personal and property rights of its citizens. All powers not delegated by it to the Union, nor prohibited by it to the States, it declares, are reserved to the States or to the people. It is, at once, the charter, the anchor, the bulwark, the high tower of American liberty.

30. Preamble.—The reason and purposes of the Constitution are set forth in a few short clauses at its beginning. These are called the Preamble, and are in these words:

"We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

Emphasis placed upon one or more clauses of this Preamble, to the exclusion of the others, has caused the formation of parties, and led to heated political controversies. One class of citizens has held that the chief duty of the Union is to "promote the general welfare," and hence have advocated the building of great national roads and the ownership of railroads, by the Government, and the complete control of all trade by citizens of different States with each other, and that, in total disregard of the States and State lines, the Government should undertake to do any needful thing to promote the general good, such as, to provide education and profitable employment for every person, pensions for the aged and unfortunate, and homes for the sick and poor, establish uniform restrictions on marriage and divorce, and fix the wages and hours of work of all laborers. Another class has contended that to "secure the blessings of liberty to ourselves and our posterity" and to "provide for the common defense" are the only reasons for a national government, and all its undertakings should be directed to those ends, and that the control of all other governmental matters should be left to the States.

But it is not right to thus emphasize any particular clause of the Preamble, or to ignore any other clause. They are all equally important.

Besides, the Preamble of itself does not enumerate the powers of the Union, or limit the powers of the States. It simply sets forth, in general and comprehensive terms, the great purposes for which the Union or nation was being formed, and for which it should be continued. Having announced these purposes in the Preamble, as a preface, the Constitution then proceeds to enumerate certain powers to be exercised by the Congress, or by the President, or by the courts, or certain things to be done by each of them; and it has been by exercising ~~these~~ powers that many of those beneficent purposes have ~~been~~ accomplished by the thing we call the Government of the United States of America. Those purposes are very high and honorable. No nation could well have higher or better ideals. To secure the blessings of liberty throughout the entire land for all time; to establish absolute justice; to insure friendly peace and tranquillity among all the States and all their inhabitants; to constantly strive to promote the general welfare of the whole people throughout hundreds of years; and to defend them at all times from outside enemies, are high national ambitions, and the best purposes a nation can have. Our Government has not fully accomplished those great purposes; it has not yet established absolute justice; it has not fully insured domestic tranquillity; it has not always striven to promote the general welfare; but to accomplish those purposes has been the constant aim of the great mass of the people, and no other great nation in the world has done so much towards accomplishing them. Such great principles cannot be quickly carried into accomplished fact; but the fine thing about the Constitution is that, as its first words, it sets before the nation lofty ideals and great purposes, and made it plain that each succeeding generation

was to try to push them a little further towards perfect accomplishment.

31. Amendments.—But the Constitution is not exactly as it was when first adopted. It has been changed by adding to it seventeen amendments. These have the same force and effect as the original Constitution. They were made a part of it by being proposed by two-thirds of the members of both houses of the Congress to the legislatures of the several States, and by being ratified by the legislatures of at least three-fourths of the States. The Constitution itself provided that it could be amended in that way. But that is not the only way; if either house of Congress should become stubborn and refuse to propose an amendment which the people in as many as two-thirds of the States really want, the Constitution provides a way by which its submission may be forced. Instead of the amendment being proposed by two-thirds of both houses of Congress, the legislatures of two-thirds of the States may ask Congress to call a convention for the purpose of proposing amendments, and when that is done Congress is bound to call such a convention, and to submit any amendment it proposes, to the legislatures of the several States, or to conventions called in the several States for the purpose of considering it, and if it is ratified by the legislatures of three-fourths of the States or by three-fourths of such conventions, it becomes a part of the Constitution. An amendment is considered ratified by a State when a majority of the members of both houses of its legislature or a majority of the members of the convention (which, of course, will have but one house) vote for its ratification.

The first ten amendments were proposed to the various States at the first session of the First Congress and were proclaimed to be in force on December 15, 1791. Some of the States, notably Virginia, New York and North Carolina, would not adopt the Constitution until they were assured

these amendments would be added. They have been styled its "Bill of Rights." They are not quite that, though that is not a wholly inapt characterization. They did not take from the Government of the United States any power which had been expressly given to it by the Constitution, but they affirmatively state that the powers not given were reserved by the States or by the people, and they made it clear and unmistakable that certain fundamental rights of citizens should never be denied by the Government, and that it should not assume to enact any law or do anything that would curtail those rights.

The Eleventh Amendment was proclaimed ratified January 8, 1798. It simply prohibited citizens of one State or of a foreign country from suing another State in a United States court. A State does not permit its own citizens to sue it, except by its express permission, and this amendment simply prohibits a citizen of another State or of a foreign country from doing what the State will not permit one of its own citizens to do.

The Twelfth Amendment, proclaimed ratified September 25, 1804, changed the method of voting by presidential electors for President and Vice-President.

There were no more amendments for more than sixty years. Then three were adopted within five years. They all grew out of the Civil War. The Thirteenth, proclaimed ratified December 18, 1865, prohibited slavery throughout the United States and all places under their control. The Fourteenth, consisting of four sections, was proclaimed ratified July 28, 1868. It declared that all persons born or naturalized in the United States are citizens of the United States and of the State wherein they reside. It forbade any State to abridge the privileges of any citizen or to deprive any person of life, liberty or property without due process of law, or deny to any person the equal protection of the laws. The Fifteenth Amendment, proclaimed ratified March 30,

1870, forbade any State to deny to any of its citizens the right to vote on account of race, color or previous condition of servitude.

No other amendment was adopted for more than forty years, and then two were added the same year. The Sixteenth Amendment, proclaimed ratified February 25, 1913, authorized Congress to levy a tax on incomes without apportioning it among the States. The Seventeenth, proclaimed ratified May 31, 1913, requires a Senator in the Congress to be elected by the people of a State, instead of by its Legislature.

All these amendments will be given due consideration in the discussions which follow.

32. Divisions of the Government.—The Constitution provided for a government of three great departments—the executive, the legislative and the judicial. The judicial department consists of the courts; the legislative, of Congress; and the executive, of the President. The functions of each department cannot be fully stated in a few simple words. But in general terms it may be said that the legislative department makes the laws, the judicial interprets them, and the executive enforces them as thus interpreted. That is the usual definition, and it is correct as far as it goes; but it is not fully accurate, for the judicial department (which means the courts) enforces the laws by applying them to individuals who are parties to suits, and thereby points out to the public their meaning; and a law defining the duties of an executive officer may be so plain as never to need to be interpreted by the courts. The three departments are necessary for the orderly working of a republican government.

Questions on Chapter IV.

1. What is the fundamental law of the land? (29)
2. Suppose a law is in conflict with the Constitution? (29)
3. What does the Constitution guarantee to each State? (29)
4. What powers are reserved? (29)

5. What is the preamble? (30)
6. What parts of the Constitution are binding? (30)
7. How many amendments? (31)
8. How were these obtained? (31)
9. Into what three departments is the government divided? (32)
10. What in general terms are the functions of each? (32)

CHAPTER V.

THE LEGISLATIVE DEPARTMENT.

33. Congress.—The legislative powers of the United States Government are vested in the Congress, which is a law-making body composed of two houses, the Senate and the House of Representatives. The Senate is sometimes, in popular phrase, spoken of as the Upper House, and the other as the Lower House. But neither is so designated in the Constitution or laws, and as they meet in different chambers situated on the same floor of the Capitol neither is upper or lower in point of location. These words are supposed by some persons to designate what was intended at the first to be the relative rank of the two houses, but that distinction finds no support in the Constitution, for it would be difficult to determine from that instrument which is given the higher rank, for to the House alone is given the power to originate bills for raising revenue, while the Senate can confirm or reject or alter treaties made by the President with other nations, without consulting the House, and treaties are a part of the supreme law of the land. The truth is, that the use of these words was borrowed from the custom which prevailed in several of the colonies of designating the Council, which was appointed usually by the Governor, as the Upper House, and the Assembly, which was chosen by the people, as the Lower House. But the kingly days have gone, and the designation of the two houses of Congress as Upper and Lower has long since ceased to have any real significance,

although the use of the words, as a short and convenient method of designating them, still survives, though not so generally of late years as formerly.

34. House of Representatives.—The House is composed of Representatives elected by the direct vote of the people. It is, therefore, spoken of as the “popular branch” of Congress. It is descended from the colonial assemblies, and like them is alone vested with authority to originate measures of taxation. Tariff bills and other bills for raising revenue originate in the House, but these may be modified in the Senate, and nearly always are. But even after such changes are made, the House yet has the right to say whether it will accept them or not.

Every State, however few its inhabitants, is entitled to at least one Representative, and the additional number to which it is entitled depends on the whole number of persons it has, excluding Indians not taxed. Each organized Territory is entitled to one delegate in the House, and such delegate has all the privileges of a Representative except that of voting. The Representatives vote as individuals on all subjects, except when they are called upon to decide a Presidential contest, and then they vote by States; that is, in such case, which fortunately is exceedingly rare, each State has one vote, and what that vote will be is determined by the majority of its Representatives.

35. Qualifications.—A Representative must be twenty-five years old, must have been a citizen of the United States for seven years, and must be an inhabitant of the State from which he is elected, but need not be a resident of the district by which he is chosen, though he usually is. The term of a Representative is two years, and if a vacancy occurs another election must be held to fill it. The Governor has no authority to fill such vacancy by appointment, as in case of a vacancy in the Senate, but it is his duty to call a special election for

the purpose, at the time prescribed by the laws of the particular State.

36. The Speaker.—The presiding officer of the House is the Speaker. The title is borrowed from England and the colonial assemblies. For centuries the presiding officer of the House of Commons in England had been styled Speaker, because he was the House's mouthpiece or spokesman in addresses made by it to the king, whose favors and good graces the Commons in former times thought it necessary to cultivate. When legislative assemblies, whose members were chosen by the people, were organized in the American colonies, their presiding officers, in imitation of the English custom, were called Speakers; and when the Constitution was framed, it was natural that the presiding officer of the House of Representatives, whose members were to be chosen directly by the people, should be designated therein as "their Speaker," though the House does not make addresses to the President, and the Speaker is in no sense its mouthpiece except that he attests or signs all bills which pass the House, and all bills that pass both houses are laid before the President for his approval or rejection.

Once in two years the Representatives elect one of their own number to be Speaker. Until late years he was usually permitted to appoint all the House committees, and by that means he was clothed with immense power in shaping legislation, and came in time to be, next to the President, the most important officer of the Government. But the House has power to prescribe the mode by which its committees are to be raised; it can at any time prescribe that committee assignments be made by a special committee of members chosen for that purpose, or be made by the House itself, or be made in some other way; and of late years they have been made by a special committee, of which the Speaker may or may not be a member. This mode of raising the committees has somewhat curtailed his powers; but it is still his duty to

preserve order and regulate the debates, and he is usually the leader of his party in the House, and his position gives him great power in concentrating the attention and labors of Representatives on certain matters of governmental policy, and hence he is a most important officer of the Government.

37. Number of Representatives.—For the purpose of ascertaining the number of Representatives to which each State is entitled, the Constitution requires that a census of the people be taken every ten years, or that they be counted, and the count includes the whole number of inhabitants except Indians not taxed. Congress then declares that each State shall have for the next ten years one Representative for a certain number of persons, which is not to be less than 30,000. This number is called the apportionment unit, and for the current decade is about 211,877, and the number of Representatives to which a State is entitled is ascertained by dividing the whole number of its inhabitants by that unit. Missouri's number for the current decade is 16, and the whole number of Representatives is 435.

37a. Representative Districts.—The Constitution provides that "the times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations." Prior to 1872 each State could elect its whole number of Representatives from the State at large, or lay off the State into districts and elect one from each, according to its own will. But since that time the Congress has directed that each State be divided by its Legislature into as many districts as it is entitled to Representatives, and that one Representative, and no more, be elected by the voters of each district, except that for the first Congress after an apportionment is made all the additional Representatives to which a State is found to be entitled because of an increase in its population,

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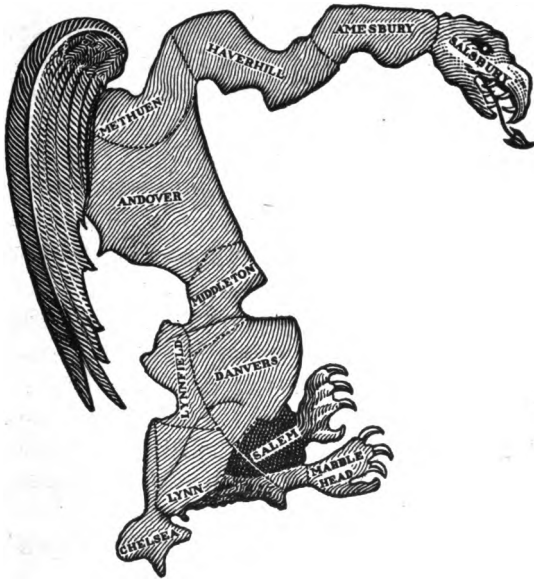
CONGRESSIONAL DISTRICTS OF MISSOURI, 1910 to 1921.

In 1901 the Legislature of Missouri laid off the State into 16 Congressional districts, all of which are clearly shown on this map, except those within St. Louis. The tenth district consists of St. Louis county and a part of north St. Louis and about twice as much of south St. Louis. The eleventh and twelfth districts lie wholly within the city. Missouri neither gained nor lost any Representative by the census of 1910 and the Apportionment Act of 1911. The districts were not changed by the Legislature in 1911, although the population of many rural counties had decreased and of the two large cities had increased in the preceding ten years. The State has not been redistricted since 1901.

38. Time of Choosing Representatives.—It was intended by the framers of the Constitution that the time for holding elections for Representatives should be left to the legislatures of the several States; and that was done for more than eighty years. But the legislatures fixed on different dates, elections in some States being held as early as May, in others in July, in others in August or September. That produced confusion in the public mind, and sometimes discord, and the confusion increased as the number of States increased. But Congress was given the power to regulate "the times" as well as the manner of holding such elections, and to remove such confusion it enacted a law in 1872 requiring them to be held on the first Tuesday after the first Monday in November of even-numbered years in all the States, and later modified that law so that it does not apply to a State whose constitution until changed requires its elections to be held on a different date. The first Tuesday after the first Monday in November of even-numbered years is now the date for holding general elections in nearly all the States; and so Representatives in Congress throughout America are elected on that date, with the exception of Maine, whose constitution fixes the day as the second Monday in September, and has so fixed it since 1864.

39. Gerrymandering.—A State is laid out into Congressional districts, not by Congress, but by the State's Legislature. In almost every State these districts are usually so shaped as to give political advantage to the party in power in the Legislature at the time they are formed. To be sure, the Congress requires that all districts "shall be composed of contiguous and compact territory, containing as nearly as practicable an equal number of inhabitants." But every county is contiguous to some other, and "practicable" to too many legislators means what is most advantageous to their party. So there has grown up in all the States, it matters not what party is in control, a practice by which the districts are so laid out that the largest possible number of them are

carried by the party in power. This practice is called "gerrymandering," and derives its name from Elbridge Gerry, who was Governor of Massachusetts in 1812. The General Court that year so laid off that State that the outlines of one district had a dragon-like shape. This outline was indicated on a map of the State which hung on the wall of the office of Ben-



***THE MASSACHUSETTS GERRYMANDER.**

jamin Russell, the editor of a paper called the "Centinel." John Fiske says that one day the celebrated painter, Gilbert Stuart, came into Mr. Russell's office, and observing the uncouth figure, added with his pencil a head, wings and claws, and exclaimed, "That will do for a salamander." "Better say Gerrymander" growled the editor, and thus originated the uncouth word which describes the practice of

*NOTE.—This cut and much of the explanation are taken from John Fiske's Civil Government of the United States.

so dividing the State into districts as to give the party which has control of the Legislature the most of the Representatives elected from the State. This is done by forming one or more districts of counties which give large majorities to the opposite party, and then so laying off all the other districts that each will give a smaller majority to the party in power in the Legislature which districted the State. The real remedy for whatever injustice arises from gerrymandering is to be found in an appeal to the legislators' sense of fairness, and the defeat at the polls of such of them as resort to it to the extent of defeating the popular will.

40. Voters for Representatives.—The Constitution says that "the electors" for Representatives "in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature." That simply means that every person qualified to vote for a Representative in the State Legislature is qualified to vote for a Representative in Congress. But a person qualified to vote in one State might not be if he lived in another. Some States require a citizen to be able to read and write before he can vote; others, that he shall have paid a small property or poll tax. Some States permit both men and women to vote. Others do not permit women to vote, but do permit any male citizen twenty-one years old, however ignorant or whether he has paid any poll or other tax or not, to vote, unless he is a lunatic or a soldier on duty or has been convicted of a crime and not pardoned. Thus in Massachusetts, Maine, Connecticut and some Southern States a voter must know how to read and write. In Rhode Island the citizen who owns land is not required to register, while all other male citizens who wish to vote must register ten months before election day, and thus the voting is confined to permanent residents. But every State, by establishing an educational or property qualification for the right to vote, lays itself liable to have its number of Representatives in Congress proportionally

decreased, for the Constitution says that when the right to vote is denied to any male citizen twenty-one years old, except for participation in crime, the number of Representatives the State shall have in Congress and the votes it shall have for President "shall be decreased in the proportion which the number of such male citizens thus excluded from voting bears to the whole number of male citizens twenty-one years of age in such State." This provision is a part of the Fourteenth Amendment, and was enacted in the days soon after the Civil War when partisan passions were aflame, to provide a way for punishing a State which should ever deprive a negro of the right to vote. But the fact that its enforcement would cut down the number of Representatives of every State which might require a voter to have a certain amount of education or property, has made Congress slow to enforce it.

41. The Senate.—Each State is entitled to two Senators, and no more, and each is elected for a term of six years, beginning on the 4th of March after his election, and each has one vote on any proposition that comes before the Senate. The Constitution as framed declared that Senators should be chosen by the legislatures of their respective States, and for more than a hundred and twenty years they were elected in no other way. But in 1912 the Congress proposed to the legislatures of the several States an amendment declaring that they should be elected by the people, and that all persons who were qualified to vote for Representatives in the Legislature should be qualified to vote for a Senator in Congress. That amendment was ratified by the legislatures of three-fourths of the States by May 31, 1913, and hereafter Senators will be elected by the people at the general election in November. If a vacancy occurs in the office of Senator, the Governor appoints a successor, who serves until the people, at the next general election or at a special election called by

the Governor for the purpose, elect someone to fill out the balance of the term.

The Senate appoints its own standing committees, assignments being usually made upon the recommendations of a special committee created for the purpose, or upon the motion of the chairman of the caucus of Senators of the party having a majority of members.

As there are 48 States, there are 96 Senators, and that number cannot be decreased, nor can it be increased until the number of States is increased. On the other hand, Congress can increase or decrease the number of Representatives every ten years.

41a. Qualifications and Classifications.—A Senator must be an inhabitant of the State from which chosen, thirty years of age, and for nine years must have been a citizen of the United States. Their terms are so arranged that one-third of them expire every two years, that is, with the end of each Congress. At the first Congress, all the Senators were divided into three equal classes, and by the Constitution the terms of the first class expired in two years, those of the second class in four years, and those of the third class in six years. Those who were elected to take the place of the first class served for a term of six years from the expiration of the two-year term of that class, and those chosen as successors of the second class served six years from the end of the four-year term of that class, and so also when those of the third class had served their six-year terms their successors were chosen for six years more. This arrangement has thus progressed through all the years since the first Congress met. When a new State was admitted to the Union the first Senators chosen therefrom were assigned to the classes which then had the least number of Senators belonging to them. Thus the three classes have been kept as nearly equal as possible, and thus two-thirds of the Senators, at the beginning of each Con-

gress, are experienced members. This arrangement makes the Senate practically a continuous body.

42. The Presiding Officer.—The officer who presides over the sessions of the Senate is the Vice-President of the United States, and that is about all he does. He appoints no committees, and has no vote except when the Senators are equally divided, and then his vote is called the “casting vote.” The Senate also chooses from its own members a President of the Senate *pro tempore* to preside in case of the death or absence of the Vice-President, or in case the Vice-President should succeed to the office of President.

45. Sessions of Congress.—Congress must meet at least once in each year, and may convene oftener by call of the President. A regular session begins the first Monday in December of each year. It is not called by the President; its time of meeting is fixed by law, and hence it convenes without any notice to members and without any call from any one. The first regular session may last one year if the two houses so choose; that is, from the beginning of one regular session in December to the beginning of the next regular session in December. The second regular session ends by law on the fourth of March of each odd year; that is, on the fourth of March after it begins in December. Congress cannot meet in special session except upon the summons of the President.

Neither house can adjourn while Congress is in session for more than three days without the consent of the other, but there is nothing to prohibit both houses from agreeing on a vacation of any length which would not interfere with regular sessions. If the two houses cannot agree upon a time of adjournment the President may adjourn them to such time as he may think proper—a thing he has never yet done. Not only can the President convene Congress in “extraordinary” session, but he can also convene either house without convening the other, and it has grown to be the rule for him to

convene the Senate for a short session just after his inauguration in order that it may confirm his selection of Cabinet officers.

All the sessions of Congress held between the fourth of March of one odd year and the fourth of March of the next odd year are called a "Congress"—for instance, the 63rd Congress embraced a period of two years, as did every other Congress. There were held, therefore, between March 4, 1789, and March 4, 1917, sixty-four Congresses, having 128 regular sessions, besides a number of special sessions.

46. Beginning of Sessions.—As Representatives are elected in November of even years and the first regular session of the Congress to which they are elected does not begin until December of the next year, a new Representative will not, unless a special session is called, which is never done except "on extraordinary occasions," take his seat for thirteen months after his election. For this reason there have always been thoughtful persons who believe that the Government would be brought closer to the people and that the people would be more potent in influencing its affairs if the first regular session of Congress after an election were begun on the fourth of the next March, and the second regular session on the fourth of the succeeding March. In addition to this reason, it is urged that, under the present arrangement, the party in power if it fails at the polls is, smarting under the sting of defeat, met with the temptation at the short session that intervenes between the election and its end on the fourth of March, to do some very partisan and high-handed things. If Congress at any time should desire to fix the fourth of March, or some other day, for the beginning of the sessions of Congress, it has power to do so, for the Constitution says they shall begin on the first Mondays in December unless Congress "shall appoint a different day." In opposition to the change, however, it is replied that business is very intimately responsive to changes in administration, and for that reason

it is best that there be a considerable period in which the people may gradually adjust their affairs to the foreseen changes that a Congress of different political beliefs would make.

47. Like Powers of Both Houses.—(1) Each house has the right to make rules for its own government. But as the Senate is a continuous body, in the sense that two-thirds of the Senators are always "old" members, its rules are rarely changed, and it is very difficult to change them. Each House, however, is a "new" house, in the sense that the terms of all Representatives begin and end at the same time, and hence it adopts its own rules at the beginning of each session, and changes them at will.

(2) Each house has the right to "judge of the qualifications of its own members;" that is, it may refuse a person who claims to be a member the privilege of becoming a member, because he is not of the right age, or has not resided long enough in the State from which chosen, or is not a citizen of the United States, or was not elected in the way provided by law or was fraudulently chosen.

(3) Each house keeps its own journal, and the yea and nay votes must, on the request of one-fifth of the members present, be taken on any pending measure, and entered thereon. That means that, when such a request is made, the roll of members is called, and if a member is in favor of the pending measure he answers "aye," and if he opposes it he answers "no," and his answer is entered on the journal, which is a permanent record, and thus the people can always ascertain how any member voted on a bill or other pending proposition.

(4) The members of each house receive an annual salary of \$7,500, and this amount may be increased or decreased by law of Congress. In addition, the Government pays their traveling expenses in going to Washington to attend a session of Congress, and in returning therefrom, and in

attending to any other duty which their respective house directs them to perform in its behalf.

(5) The members of both houses are privileged from arrest during their attendance upon the sessions of their respective houses, and in going to or returning from the same, for any offensive conduct except treason, felony and a breach of the peace; and for any speech made in either house while it is in formal session they cannot be prosecuted or sued in any court or called to account in any other place.

There are two reasons for this. The first is that important legislation might be interfered with and delayed and even necessary action of the Government defeated, if Senators and Representatives could be arrested for minor crimes and thereby prevented from attending the sessions of Congress. It would be easy to cause their arrest were it not for this clause in the Constitution. Any private citizen may file a complaint with a justice of the peace, charging another private citizen with having committed a minor crime, and a complaint is the first step towards an arrest, and is usually, though not always, followed by a warrant of arrest. Partisan feelings sometimes become bitter, and in such times mean men, sheltered by a public hatred running strongly in their favor, would come forward to file complaints and cause the arrest, for trivial offenses, of Senators and Representatives of opposite views, and thereby defeat or delay pending legislation to which they object. This clause was placed in the Constitution to thwart the effort of such men to cripple the Government or impair the power of Congress to act for the whole people without fear or ruthless embarrassment. The second reason—the reason for the provision which does not permit a Senator or Representative to be punished for any speech he may make in Congress—is that free speech and liberality of discussion are necessary to intelligent action in any legislative body, and for an abuse of that freedom by a member the house to which he belongs may compel him to apologize,

or even expel him, and having been punished once he should not again be punished for the same offense. If a private citizen publishes a hurtful untruthful statement concerning another he may be sued for damages in a court, or in extreme cases punished as for a crime; but if a member of Congress utters a slander about another, or even about a private citizen, during a session of the house to which he belongs, he cannot be sued for damages or prosecuted in any court, however wicked and untruthful his words may be.

But for treason or a felony Senators or Representatives may be arrested, even within the halls of Congress, and prosecuted and punished just as if they were private citizens; and members have been arrested for disturbing the peace in and near the Capitol.

48. How a Law is Passed.—A majority of the members of a house constitute a quorum to do business, and if a bill receives, in each house, the votes of a majority of the members present, if such members be a quorum, and is signed by the President, it becomes a law. If the President veto it, that is, refuse to sign it, he shall return it to the house in which it originated, with his objections; it must then receive the votes of two-thirds of the members of each house before it can become a law. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless Congress by its adjournment prevent its return, in which case it shall not be a law.

49. Impeachments.—It may, sometimes, be necessary to try a President, or a judge or other civil officer of the Government, for treason, bribery, or other high crime or misdemeanor. Such trials are called impeachments. They begin in the House, which makes up a formal charge against the accused officer and presents it to the Senate, and the Senate tries him. If the President is on trial, the Chief Justice presides, but in all other cases the Vice-President

may preside. In any case two-thirds of the Senators present must vote against the accused before he can be found guilty, and if convicted the penalty can go no further than removal from office and disqualification from holding a Federal office, but the accused officer may be held for trial in a court, just as any other person, if he has committed a crime.

Congress has not often invoked its powers under this clause of the Constitution. Three or four times early within the last century, and at least twice within the present century, Federal judges were charged with cruelty and corruption in office and with usurping powers which did not belong to the courts, and were impeached by the House and brought to trial in the Senate, but in nearly every case they were acquitted. And once, soon after the Civil War, an attempt was made to impeach a President. Andrew Johnson, then President, was charged with removing men from office in violation of a law of Congress, and was brought to trial. His defense was that the law forbade the President to remove from office a member of his Cabinet or other high executive officer and was therefore unconstitutional, since it was an attempt to limit or impair the power vested in him by the Constitution, which vests in the President alone the whole executive power. This proceeding profoundly stirred the country, and resulted in his acquittal by one vote, and now all men rejoice that he was acquitted. Thus, fortunately for our own peace and to the credit of our public officers, it has rarely been necessary to invoke this provision of the Constitution, but there can be no doubt that the existence of the power in Congress to impeach and remove from office a president, a judge, or other high Federal officer, has been of great value to the people in deterring such officials from wrongdoing.

50. Treaties.—The President, by and with the advice and consent of the Senate, may make treaties with a foreign nation. Treaties are agreements or contracts between

nations. They usually relate to a settlement of international disputes, or to the fixing of the national boundary, or to the acquirement of new territory, or to the terms upon which trade may be carried on between citizens of the two countries. But before such treaties can be binding they must be approved by two-thirds of the Senators present in the Senate when they are acted on. When treaties are made in this manner they become a part of the supreme law of the land (Art. 6, sec. 2) and are binding on everyone. Neither Congress nor the courts can repeal or ignore them. They are in the nature of solemn contracts between two nations, and often are to exist during a term of years, and during that time neither nation can violate their terms without violating its honor. And for a persistent violation of their treaty agreements, the usual means of redress resorted to by nations in the past has been war with the one refusing to keep its contract. But in late years there has grown up at The Hague an International Arbitration Congress, whose avowed purpose is to provide uniform rules by which all nations are to be governed in their dealings with each other, and to settle by arbitration disputes between them.

It will be observed that a treaty is a supreme law, and it is the only kind of law that the President and either house can enact without the consent of the other.

51. Why Congress Has Two Houses.—At this time eleven States, or less than one-fourth of the whole number, have 228 Representatives in Congress, and the other thirty-seven 207. In the first Congress, which met on March 4, 1789, four States had 32 members and the other nine 33. Delaware and Rhode Island had only one each. It was early proposed in the Constitutional Convention that the Congress should be composed of one house, and that each State should have representatives therein in proportion to the number of its inhabitants. At this the small States drew back. They feared their interests would be swallowed up by such States

as Virginia, which had ten times as many inhabitants as Rhode Island, and Pennsylvania, which had eight times as many as Delaware. The Union under the Articles of Confederation was a union of States, and in the Continental Congress there was only one house, in which each State had one vote and no more. The small States argued that if this plan was to be abandoned and each State was to have representation in proportion to its population alone, it would result in an extinguishment of the States, and if not, then the voice of a small State would be so feeble as never to be heard. In reply to this, the larger States urged that each State ought to be represented in proportion to the number of its inhabitants; that there was no higher or fairer rule for representation than this. They said the Articles of Confederation were unjust in granting to the small number of inhabitants of small Delaware the same voice and vote given to eight times as many people in Pennsylvania. This difference over representation in Congress seemed so irreconcilable that the Constitutional Convention was on the point of breaking up. It was at this crisis that the Connecticut delegates came forward with a plan that resulted in a Congress of two houses. In that State, as indeed in others, the lower house of the Legislature was composed of one member from each town, while the upper house consisted of a variable number, dependent on the number of inhabitants, elected from the State at large. This arrangement suggested to them a solution for the difficulty. Having it in mind, they proposed that the Congress should consist of two houses, and that the upper house should represent the States, in which each State should have an equal voice, and that the lower house should represent the people, and that the number of Representatives each State should have in that house should depend on the number of persons residing therein. This plan was accepted, and has ever since been known as the Connecticut Compromise. After it was agreed upon, all other differences were adjusted without difficulty.

Questions on Chapter V.

1. What is the law-making body? (33)
2. How is the House composed? (34)
3. What measures must originate in it? (34)
4. How many Representatives? (34)
5. How do they vote? (34)
6. What are the qualifications of Representatives? (35)
7. How are vacancies filled? (35)
8. What is said of the Speaker? (36)
9. Does he appoint the committees? (36)
10. How is the number of Representatives ascertained and determined? (37)
11. Discuss Representative districts. (37a)
12. What body determines the time for electing Representatives? (38)
13. What is said of gerrymandering? (39)
14. Who may vote for Representatives? (40)
15. Are the qualifications of a voter the same in each State? (40)
Name some variations. (40)
16. How may Congress punish a State which prescribes a property or educational qualification for voting? (40)
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18. How many Senators and how elected? (41)
19. How were they formerly elected? (41)
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21. What are the qualifications of a Senator? (41a)
22. How are their terms arranged and how was this classification brought about? (41a)
23. In what sense is the Senate a continuous body? (41a and 47-1)
24. Who presides over the sessions of the Senate? (42)
25. Describe the meeting and sessions of Congress. (45)
26. Discuss beginning of sessions. (46)
27. What are some of the like powers of both houses? (47)
28. What is a quorum? (48)
29. When does a bill become a law? (48)
30. Describe the President's veto. (48)
31. Discuss impeachments. (49)
32. By whom are treaties made? (50)
33. What are they and how enforced? (50)
34. How did it come about that Congress has two houses? (51)

CHAPTER VI.

POWERS OF CONGRESS—TAXATION.

52. General Powers.—The Constitution in section 8 of article I enumerates some of the powers given by it to the Congress. It is there specifically said that the Congress shall have power to do certain things. Other parts of the Constitution say that Congress shall have power to do certain other things. The exercise of these powers has given shape and strength to the Government of the United States. It is, therefore, of great importance to understand what these powers are.

And an understanding of them becomes of greater importance if it is remembered that the Government has no power except what is given it by the Constitution. That is what is meant by saying the Government is one of "enumerated" powers. Its powers are enumerated, or expressed, in the Constitution. It cannot do just anything the Congress, or the Congress and the President and all its officers combined, may want it to do; it can do only those things the Constitution authorizes it to do. And any law the Congress might enact which the Constitution does not give it power to enact, is invalid, and when declared invalid by the Supreme Court is binding on no one. To illustrate: Suppose Congress wished to enact a law giving to women in every State the privilege of voting at all elections. The Constitution gives it no power to enact such a law, it is absolutely silent on the subject, and therefore the power does not exist, and if such a law were enacted by Congress it would be void, so long as the Constitution remains unchanged, and the only way a valid law on the subject could be had would be to give Congress power to enact it, by an amendment to the Constitution.

It should also be observed that it does not follow that because a power is vested in Congress it is compelled to exercise it, except where it is specifically required by the Constitution to do so. In the nature of things it must be allowed a discretion as to how far it will exercise some powers vested in it, or whether it will exercise them at all. For instance, Congress is given power to declare war, but it is not compelled to declare war, and should never do so except when war is the only means of preserving the country's honor. Again, it is given power to levy taxes on imports, and on lands, and on persons, and on other things; it can therefore cause any of these things to be taxed, and it can make the taxes high on some and low on others, and it can refuse to tax imports at all, and levy all its taxes on lands, or all on persons, or raise its revenue by taxing other things it is given power to tax. But it has rarely laid a tax on lands, and never one on persons, but almost from the beginning has laid a tax on some imports, and sometimes the tax has been very high, and moderate at other times. So Congress is not compelled to exercise every power given to it, but whether or not it will exercise it at all, or if exercised to what extent it will do so, depends on the needs of the Government and the wishes of the people.

Some powers of the Congress are exclusive; that is, they can be exercised only by the national Government. There are other things which may be done by either the national Government or the State. For instance, only the national Government can coin money, but either can construct post roads, or highways along which the mails are carried.

53. Taxation.—It is said in said section 8 that "the Congress shall have power to lay and collect taxes, duties, imposts and excises" for the purposes of paying the debts and providing "for the common defense and general welfare of the United States."

This is the clause of the Constitution which confers on the national Government the power of taxation, and it was

this clause which enabled it to get on its feet and to make its authority permanent. The Articles of Confederation gave to the Continental Congress no real power of taxation. When it needed money it called on the States for it, and if they refused to furnish it, it had no way to punish them or to get it by seizing the property of the citizen. But under this clause of the Constitution the national Government is authorized to raise its own revenue. Congress levies taxes upon most things shipped into this country, upon some articles manufactured here, upon the privilege of doing certain kinds of business, upon the net incomes of corporations and wealthy persons, and it can levy taxes on lands and on persons.

54. Revenue.—Money raised by taxation is called revenue. It is the Government's expense money. It is used to pay the salaries of its officers, support its army and navy, erect needed buildings, reward old soldiers with pensions, operate its postal system, maintain its courts, and pay any other expenses or debts incurred by it.

55. Indirect Taxes.—Taxes which may be levied by Congress are of two classes, direct and indirect. Indirect taxes are taxes on articles of consumption and on the privilege of doing business. By indirect taxes are usually meant what in this clause are called "duties, imposts and excises."

Imposts are taxes imposed on imports. They are charges against goods shipped into this country, and are as often known as customs or customs duties, and as tariffs or tariff charges. Congress can refuse to permit any one to bring into and sell in this country fabrics, hides, lumber, sugars, coffees, grains or any other thing produced abroad, unless a tax is paid to the Government's officers, and that tax is an impost or tariff. A specific tariff is a tax on an article by the yard or pound or other quantity, in disregard of its value; an *ad valorem* tariff is a tax according to the value of the article; and the same article may be made to bear both a

specific and an *ad valorem* tariff. For instance, the tariff on a piece of silk cloth may be twenty cents per pound and forty per cent of its value. Tariff taxation has for many years been one of the Government's chief sources of obtaining revenue, and the money derived therefrom often amounts to three or four hundred million dollars annually.

56. A Protective Tariff.—A protective tariff is a tax on the products of other countries of such a discriminating kind as will prevent or restrict their competition with products of this country. Protective tariffs protect the American producer in charging more for his products than he could obtain for them were not this import tax fixed at such a rate as to lessen the quantity or increase the price here of like goods made abroad. "Protection" is meant to preserve the American market for the American producer, and thereby to build up home industries and manufactories and to enable them to pay better wages to their laborers. Protective tariffs are arranged with the double purpose of protecting the American producer from competition with like articles made in foreign nations, and of raising revenue for the support of the Government.

57. A Revenue Tariff.—A revenue tariff is a tax on imports levied solely for the purpose of raising revenue. The doctrine which favors such a tariff is that the Government's only right to levy taxes is for the purpose of obtaining money wherewith to pay its expenses. A "tariff for revenue only" does not discriminate in favor of the American producer, and is not designed to afford him any protection from competition by foreign-made goods with those produced by himself except such as must naturally result incidentally from any tariff; for the imposition of any tariff must to some extent lessen the amount of goods shipped into this country, or increase their price to the purchaser, and thereby enable the American producer to charge something more for his product than he could otherwise obtain.

58. How Imposts are Collected.—Congress has laid off the United States into customs districts, and every important seaboard town in each district it has declared to be a "port of entry," and every ship wishing to land goods at any point within that district must haul in there and pay its port fees. Arrangements must there be made for the payment of the impost fixed by Congress on the goods it carries, whether they are to be unloaded there, or at another place in the district called a "port of delivery." At each port of entry is a custom house, and appraisers who determine the value of each article of merchandise the ship carries, and collectors who collect the taxes which the law imposes. But if it suits the owner to pay the tax at a port of delivery, the goods are sent on and the duties are paid there. Besides, at each port of entry and delivery are customs stores, or warehouses, in which the owner, by giving bond, may keep his goods for a fixed time without paying the tariffs, but if they are not paid within that time they may be put up and sold by the collector, or he may bring suit on the importer's bond for the amount of the duties. These stores are called "bonded warehouses" because the owner of the imports by giving bond may leave them therein for a certain time without the payment of the duty.

In order that vessels do not land at some other point than a port of entry and thus escape the payment of port fees, and the owners of goods avoid the payment of the tariffs, the Government has provided "revenue cutters," or small, swift, armed boats, which patrol the shore, to compel them to land at a port of entry or go back. Thus what is called "smuggling" is prevented.

59. Excises.—Excises, or internal revenue, are inland taxes, levied upon the privilege of engaging in the manufacture and sale of named articles, or of dealing in certain commodities, or of pursuing a certain occupation, or of exercising corporate privileges. They are not taxes on property itself,

but taxes on the exercise of the privilege of engaging in a certain business. They are levied on distillers for the privilege of manufacturing and selling whiskey, on brewers for the privilege of making and selling beer, on saloonkeepers and others for the privilege of selling intoxicating liquors, and on the net incomes of corporations for the privilege of engaging in interstate business; they have in times of war and even in times of peace been levied on the privilege of conveying land by deeds and of giving notes for money borrowed (in the form of revenue stamps), and during the Civil War they were levied on lawyers, merchants, hotel keepers, owners of public omnibuses and theatres, as a charge of so much a year for the privilege of engaging in those occupations. Thus, a tax of ninety cents a gallon on all whiskeys made in this country would be an excise, as would also an annual charge of five dollars to each retail dealer for permission to sell whiskeys; while a tax of any amount levied at any port of entry upon all whiskeys or wines made abroad and shipped into this country, would be an impost or tariff. The revenue raised from excises varies with the years, and with the things taxed and the rates imposed, but it has often amounted to more than three hundred million dollars a year.

60. How Excises are Collected.—For the purpose of collecting excises each State is divided into districts of convenient size, over which there is placed an internal revenue collector, with deputies and other assistants. The maker of liquors is required before he enters upon the manufacture thereof to take out a license permitting him to do so, and if he does not do so he is subject to heavy fines and even imprisonment. At his distillery or brewery he must maintain a warehouse in which his goods are stored as fast as made, and this is in the keeping of a Government officer called a storekeeper. Connected therewith are other officers called gaugers, who measure the quantities made, and on each gallon so measured the law fixes a tax, which must be paid

before the liquors are moved from the warehouse, except that they may be moved to another one called a "bonded warehouse" on the giving of a bond that the taxes will be paid within a certain time.

If the law levies excise taxes upon the privilege of issuing deeds, notes, bonds, telegrams, insurance policies, they are imposed by requiring each such instrument to bear a stamp of a named amount. The stamps are sold by the internal revenue collector to any person wishing to buy them, and by buying them the buyer pays the tax.

A corporation is required to make a report to the collector showing its entire net income from all sources for the year, and then a tax equal to a certain per cent of that income is levied. The first law taxing incomes of corporations was enacted in 1909, and it fixed the tax at one per cent of the net income above five thousand dollars. But Congress can from time to time vary the per cent, and if it wishes lay a tax on the entire net incomes of all corporations doing an interstate business.

61. Uniformity.—"All duties, imposts and excises shall be uniform throughout the United States." The revenue collected for the manufacture of a gallon of whiskey of a given grade is the same whether made in New England or Kentucky. The imposts on sugars are the same at New Orleans as at New York. These charges are fixed by a general law, which simply declares that all silks of a named weight and quality shipped into this country shall pay certain duties; that hides shall pay certain other duties; and that certain other articles (such as gold) shall be admitted free of any duty at all ports. The value of this provision for uniformity cannot be overestimated. If Congress could fix one tax rate on an article if entered at one port and a different rate if entered at another port, it could by a tariff law alone ruin or enrich any part of the country, according to its own wishes. If a very high tariff were imposed on all cloths entered at an Atlantic

or other Northern port, but admitted free of duty if entered at New Orleans, the discrimination might result in the ruin of the clothing factories of the Mississippi Valley, and the consequent enrichment of those of New England. Besides, such a discrimination would cause the system of tariff taxation to break down because of its own inequalities and injustice; it would produce discord, confusion and constant bickering; it would be a denial of equal rights under the law. Hence, the value of this provision that requires all tariff and internal revenue taxes to be uniform throughout the United States.

62. Direct Taxes: Incomes.—But there is no such rule of uniformity for direct taxes. The Constitution requires a direct tax levied by Congress to be apportioned among the States according to their respective populations, and says that "no capitation or other direct tax shall be laid" unless so apportioned. Thus, the question arises at once, what are direct taxes within the meaning of the Constitution? If a tax levied by Congress is an indirect one it can be levied on the article named wherever found; but if it is a direct one, before it can be collected, Congress must determine how much of it must be paid by each State. For instance, when Congress levied a tax of twenty million dollars on lands in 1861, it divided up the whole amount among the several States, and against the lands in each was assessed such a part thereof as the number of its inhabitants bore to the whole number in all the States. Missouri's share was fixed at \$761,127.33. There was no doubt of the validity of that tax, for it has always been admitted that taxes on lands are direct taxes. It is also admitted that "capitation" or poll taxes, or taxes on persons, are direct taxes; in fact, the Constitution says so in so many words, for it declares (Art. I, sec. 9, clause 4) that "no capitation or other direct tax shall be laid unless in proportion to the census." For a long time it was contended that in the sense in which the words "direct

taxes" were used in the Constitution there were no direct taxes except taxes on lands and persons, and hence that it was not necessary to apportion any other taxes among the States. But slowly the Supreme Court of the United States came around to the view that taxes on the income of lands, such as rents, were also direct taxes; and when Congress in 1894 levied a tax on incomes, without apportioning the amount among the States, that court held the law to be in violation of the Constitution, because it laid a tax on the incomes of lands, which was in effect the same as laying the tax on the lands themselves. This decision made it impossible to levy taxes on incomes from lands, for, except rented lands, it is almost impossible to ascertain the net income of a farm or house. But there had grown up a general demand in the popular mind for an income tax, and so in 1909 Congress proposed to the legislatures of the several States the Sixteenth Amendment to the Constitution, which provided that "Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." That amendment was ratified by the legislatures of three-fourths of the States by February 25, 1913, and hence became a part of the Constitution. Congress was not slow in using the power it gave. In August, 1913, it enacted a law levying a tax upon the net incomes of unmarried persons in excess of three thousand dollars, and upon the net income of a married person in excess of four thousand dollars. The tax is usually graduated; that is, the larger the net income of a person the greater is the percentage of the tax he must pay. For instance, the tax upon incomes between \$3,000 or \$4,000 and \$20,000 was by the Act of 1913 made one per cent of the net income; on net incomes between \$20,000 and \$50,000, it was two per cent, etc., increasing as the net income increased, until it was six per cent on all incomes in excess of a half million dollars.

An income tax, and especially one so graduated as to increase as incomes increase in size, seems to run counter to the rule of uniformity and to be a denial of equality before the law; it applies alike "throughout the United States," but it levies a higher tax on larger incomes than on small ones; but the grounds upon which such a tax is based are: first, the tax, while it falls only on persons of wealth, falls on those who are most able to pay it, since incomes should be used primarily to support families, and persons of large wealth have no more children to support than poorer ones; and, second, the concentration of immense fortunes in the hands of a few persons is not good for the peace of the country and the prosperity of the people as a whole, and an income tax, especially if it is graduated, tends to check that concentration.

The tax on the incomes of persons is collected by the collectors of internal revenue, in much the same way that they collect the tax on the incomes of corporations.

The Sixteenth Amendment says nothing about taxes on lands or persons; and hence, notwithstanding that amendment, a tax on either would still be a direct tax, and in order to be valid would have to be apportioned among the States in proportion to their populations.

63. Usual Methods of Taxation.—Congress has enacted few laws imposing a direct tax, and then only for short periods, usually during a war. It has at nearly all times raised the national Government's revenue by imposing taxes admitted to be indirect. On the other hand, the States (and the towns and counties organized by them) have raised much of their revenue by imposing direct taxes. So that it may be said that the national Government's revenue is, for the most part, raised by indirect taxes, and the revenue of States and counties and cities and public schools are raised largely by direct taxes, that is, taxes imposed directly on tangible property.

64. Purposes of Taxation.—The purposes for which the Government may levy taxes are specified by this clause of the Constitution. They are “to pay the debts and provide for the common defense and general welfare of the United States.” These are comprehensive words. The power given by them to Congress is very extensive, but indefinite and not easily defined.

It is easy to understand what is meant by the words, “to pay the debts of the United States.” They mean that whenever the Government has honestly contracted a debt it must pay it, and that it has power to raise money by taxation with which to pay it. It is equally as easy to understand what is meant by “to provide for the common defense.” It means that whenever a foreign, or even a domestic enemy, threatens the peace of the Union, it has power to levy taxes to obtain money with which to provide an army or navy or other means for warding off and putting down such enemy, and even to provide means in time of peace for meeting any trouble that may at any time arise.

But what is meant “to provide for the general welfare?” Does that mean that Congress has power to levy taxes for building railroads, or for buying and operating them after they are built, or for building levees to prevent the waters of the Mississippi and other rivers from overflowing bottom lands, or for establishing schools and educating children throughout the country, or for providing pensions for widows and aged persons and support for those unable to obtain employment, or for stamping out yellow fever or cholera, or for paying bounties to sugar producers? Or, does it mean that, if these things are done at all by government, they are to be done by the States individually, and the Congress is to undertake to do only those things necessary for the general welfare which the States cannot successfully do? Statesmen and parties have differed as to the Union’s power under this “general welfare” clause.

There have always been those who have contended that Congress has power to levy taxes for anything which it may think for the general welfare; that the question is not one of power, but one of expediency; that the power of Congress in such matters is unquestionable, but whether or not it should exercise that power depends on circumstances, and that the whole point resolves itself into an inquiry as to what is wise and best for the public good in each particular case.

On the other hand, parties composed of men equally patriotic have maintained that Congress has no such power, and that even if it has it would be unwise to exercise it except in very clear cases. They say that it is giving to the words "to provide for the general welfare" an extreme and strained meaning to hold that they authorize Congress to tax the people for whatever either it or the majority of the people may deem for the general good; that if Congress, under this clause, can do whatever it wishes to do, it can do whatever a majority of its members may think would be for the general welfare, and if that is the case why have any Constitution at all? Why, they ask, if that is the meaning of these words, was not Congress given the unfettered power to do whatever it deems wise or expedient? Constitutions, they argue, are made for the protection of the minority from the arbitrary tyranny of a headlong and partisan majority, and if majorities in Congress can do what they please, the Constitution itself is a useless and vain thing. They contend that the sole purpose for the Union was that there might be a general or central authority to do for the States what experience had taught them they could not do separately, and that all other powers were in express words "reserved to the States or to the people." They, moreover, have contended for the general principle that, as a matter of practical wisdom and permanent peace, neither the Union nor the States should ever undertake to exercise any power, even if given, except when to do so is clearly for the public good and the orderly workings of society.

The student must decide for himself which of these views is correct, and in seeking for aid from the writings and speeches of others he will enter a field of most useful and patriotic inquiry.

Questions on Chapter VI.

1. Where are the powers of Congress found? (52)
2. What has been the effect of exercising these powers? (52)
3. Must Congress exercise every power conferred? (52)
4. Give some examples. (52)
5. What are exclusive powers? (52)
6. Quote the language as to power of taxation? (53)
7. What was the effect of exercising this power? (53)
8. Give one reason why the Union under the Articles of Confederation broke down? (53) How avoided under Constitution? (53)
9. Upon what things does Congress lay taxes? (53)
10. What is money raised by taxation called and for what used? (54)
11. How are taxes laid by Congress classified? (55)
12. Define indirect taxes. (55)
13. What are imposts and how popularly known? (55)
14. What is a specific tariff? An *ad valorem* tariff? (55)
15. Define and discuss a protective tariff. (56)
16. Define and discuss a tariff for revenue only. (57)
17. How are imposts collected? (58)
18. What are revenue cutters? (58)
19. What are excises? (59)
20. Upon what are they levied? (59)
21. Do they ever take the form of a stamp tax? (59)
22. Can they be levied on occupations? (59)
23. How are excises collected: 1st, on whiskey and beer; 2nd, on deeds, etc.; 3rd, on incomes of corporations? (60)
24. What taxes must be uniform? (61)
25. How are they made uniform? (61)
26. Give some reasons for the value of the rule for uniformity. (61)
27. Is there any such rule for direct taxes? (62)
28. How must they be apportioned? (62)
29. What taxes are admitted to be direct? (62)
30. How was it made possible to tax incomes without apportioning them among the States? (62)

31. Are all incomes taxed? Is the tax uniform? (62)
32. Can you give any just ground for a graduated income tax? (62)
33. How are taxes on the incomes of persons collected? (62)
34. Must taxes on lands and persons still be apportioned among the States? (62)
35. What has been the usual method of taxation employed by the Government? And by the States? (63)
36. For what purposes may Congress lay taxes? (64)
37. What is meant by "to pay the debts of the United States?" (64)
38. What is meant by "to provide for the common defense?" (64)
39. What has one party contended could be done under "the general welfare" clause? (64)
40. What has been the contention of the opposite party? (64)

CHAPTER VII.

POWERS OVER COMMERCE.

65. To Regulate Commerce.—Section 8 of article I of the Constitution says that "the Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

For a century after the formation of the Union, it was generally, almost unanimously, believed that this power was solely to regulate commerce, not to engage in it. But in late years the view that the power to regulate necessarily implies the power to engage in commerce has been gaining a larger place in the minds of students of the Constitution; and hence statesmen who believe that the first duty of the Government is to provide for the general welfare and that an easy and wide commerce is necessary for the people's prosperity, have come forward to urge that the Government should own great railroads and great lines of ships by which the necessities of life can be cheaply carried to and fro between any part of this country and other nations. Other statesmen stoutly deny that Congress has any power to authorize the Government to engage in either domestic or foreign commerce; they

contend that Congress has the right to regulate commerce between the States and with foreign countries, to prescribe rules by which private persons may carry it on, and to aid them by providing necessary facilities, such as wharfs and lighthouses, but that the Government cannot engage in such trade itself. Others contend that, even if the Government has power to engage in interstate and foreign commerce, the power should be admitted to exist only in times of emergency, when private persons cannot provide means for carrying it on, and that it would be unwise to exercise the power permanently or beyond the unexpected emergency which justified its use at all. The question has not been settled. It may some day become a very live issue in American politics.

66. Foreign Commerce.—Under this power, Congress has prescribed rules under which ships may carry the United States flag, the terms upon which they may enter our ports in times of peace or war, and pointed out the nations our ships may not visit. It has caused to be constructed lighthouses, beacons and buoys along the coast, and wharfs for the landing of ships, and custom houses at which to register, pay the port fees, and unload their goods. It has prescribed rules to be observed by the officers and crews of American ships while on voyages, and punishments for violations thereof. Other rules protect passengers from infectious diseases and regulate the carrying of inflammable goods and explosives. It has spent immense sums of money in river and harbor improvements and the construction of wharfs. Many fine ports, according to the needs of commerce, have been constructed under this commerce clause at the chief cities along the sea shore. Under the power given by it Congress can prescribe the terms upon which the vessels of other nations may land at any of our ports, and even prohibit their landing at all, and also suppress piracy on the high seas.

67. Interstate Commerce.—This clause gives Congress exclusive power to regulate commerce “among the several

States." Commerce among the States means commerce which concerns more than one State. It means intercourse and traffic by the people of one State with those of another. It is usually spoken of as "interstate commerce," and it applies to all shipments of things or the travel of persons from one State to another. Congress may prescribe the railroad fare and accommodations of any person traveling by a continuous line of railroad from a point in one State to a point in another State; and it may prescribe the charges which such a railroad may make for carrying grain, stock, coal or any kind of merchandise from one State into another State, and the kind of cars such railroad shall use; and it can prescribe the greatest number of hours out of every day such a railroad company may work its employees, and the amount of damages it must pay for an injury to its trainmen; and all these things it has done, and that being the case no passenger fare for interstate travel and no freight charge for any interstate shipment fixed by any State is binding on any such company. The power of Congress is exclusive and supreme over interstate commerce, and that applies to interstate shipments not only by railroads, but by express companies, steamboats and ships. The Legislature of this State may consider the fare charged a passenger from a point in this State to Chicago by an interstate railroad too high, or the freight charge for shipping goods from New York to some point in this State is too low, but it cannot by law either lower the one or increase the other, for both are interstate commerce, and Congress alone has been given power "to regulate commerce among the several States."

67a. Interstate Commerce Commission.—The great bulk of interstate commerce is done by railroads. Nearly one-half of the railroad mileage of the world is in the United States. In operating them hundreds of thousands of men are engaged. The safety, health and habits of those men intimately concern the whole public. Almost every town in

the land is dependent on railroads for its daily supply of food. The prosperity of farming and manufacturing very largely depends upon freight rates charged by railroads, for railroads have no source of income except the charges they exact from shippers for carrying their goods and the passenger fares they receive from travelers. It is the duty of the Government, which alone can act for the public, to see to it that those rates are just to both shippers and the railroad companies. They must be reasonable; they must be fair to all persons concerned—to the owners of the railroads, to the trainmen who must be paid for their dangerous work, and to the shipper and traveler, and to the public, whose servants they primarily are and for whose accommodation and use they are permitted to exist. The Congress can enact laws prescribing what freight charges and passenger fares they may exact. It can also prescribe the kind of cars that may be used, and rules relating to the safety, health and working conditions of trainmen, and the safety and accommodation of shippers and passengers. It has enacted laws pertaining to all these subjects. But in the very nature of things freight and passenger rates cannot be uniform throughout so great a country as this. Just rates for one part of the country would be too high or too low for another part. To aid it in regulating interstate commerce, whether by railroads or steamboats, Congress created the Interstate Commerce Commission, consisting of seven commissioners appointed by the President, each for a term of seven years, at an annual salary of ten thousand dollars. Not more than four of them can belong to the same political party. The Commission has been given power by Congress to make reasonable increases or decreases in railroad rates in any part of the country. To make such rates just, it divides the country into great sections, and prescribes the same passenger and freight rates for all the railroads in that section, and different rates for others; for instance, it can fix the maximum rates all trunk

railroads east of the Mississippi River and north of the Ohio may charge, and prescribe other rates for the railroads west of the Mississippi, or along the Rocky Mountains. It can prescribe the terms of shipping contracts, require all shippers to be treated alike, prescribe rules for the accommodation and safety of trainmen and travelers, and regulate the hundreds of details in the operation of railroads in which the public is interested. And it has similar powers to regulate commerce by boats or ships, between the States, or between this and foreign countries.

67b. Free Trade Between States.—Another clause of the Constitution (Art. I, sec. 9, clause 4) says that “no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another, nor shall vessels bound to or from one State be obliged to enter, clear or pay duties in another.” The purpose of giving Congress power to regulate interstate commerce was not to give it power to destroy such trade, but to leave it free, “in order to form a more perfect union.” Congress must use this power to establish harmony and peace and not discord among the States; it was given to “protect and promote the free and unobstructed movement of men and things between the States in the family of the Union.” So it is provided that no State can impose an impost or tariff tax on any goods shipped into it from another State or foreign country “except what may be absolutely necessary for executing its inspection laws.” Goods made or produced in other States may be shipped into this State and here sold in like manner as goods produced here, without the payment of any impost tax, and orderly citizens of those States may at pleasure pass into or out of yours, and your State cannot prevent such traffic, nor impede the freedom of such intercourse, except in so far as it may be necessary to preserve the health of your people and the orderly workings of society. And foreign goods properly admitted at any port of entry may in like manner be shipped

into your State and sold, and the State cannot impose any import tax on them without the consent of Congress, and then the net proceeds of such imposts must be turned over to the United States treasury, and hence, as Congress has never given its consent and likely never will, no State has ever levied an impost tax on foreign-made goods and in all probability never will.

67c. Inspection and Quarantine.—We may, therefore, say that no State can levy an impost on goods shipped into it, nor in any wise deny to such goods that equal freedom of sale that like goods made within the State enjoy, unless to do so would jeopardize the public health, and that is what is meant by the clause quoted above, "except what may be absolutely necessary for executing its inspection laws." The State can, in the interest of public health or safety, require all foods shipped into the State and there offered for sale, to be of a certain quality and to be free from poisons and other hurtful substances; it may, as a precaution against explosions and fires, require all oils shipped into the State for local consumption, to be inspected; and, to guard against diseases, it may require wheat and corn and meats and fish and cattle and horses shipped into the State from another State, to be inspected, and even destroyed; and it may impose an inspection fee in every such case, which the owner of the thing shipped in must pay before he can sell it, and in some cases before he can even use it. It can also prohibit the entrance into the State of persons or animals afflicted with infectious diseases. All these things it can do without the consent of Congress, because the health and safety of its citizens may require such precautions; but the inspection fees in every such case must be reasonable, nor can they be so used as to destroy or materially impede interstate commerce.

67d. Trade Within the State.—Nor has Congress any control over the trade and intercourse of the people wholly within a State. Goods shipped into a State, as soon as they

have been mingled with and become a part of the property of the State, may be taxed for State and county and city purposes, just as goods produced there. Thus, a State may require a license tax of merchants or the seller of spirituous liquors, and those licenses must be paid, whether the goods were produced within the State or elsewhere. Nor will Congress interfere with a State law fixing reasonable and just freight charges for goods and fares for passengers transported from one place in the State to another within the State by an interstate railroad, nor with laws providing for separate coaches for white and negro persons traveling from one place to another within the State, if the accommodations are otherwise equal, for this is not commerce "among the States."

68. Trade With Indians.—No State can prescribe any rule for trading with uncivilized Indians living within its borders. Congress alone can do that. It has fixed a penalty for selling guns and ammunition to hostile and uncivilized Indians, and prohibited any one to trade with them except persons of good moral character who have been specially licensed to do so, giving a bond for honest dealing.

Questions on Chapter VII.

1. What power has Congress over commerce? (65)
2. Discuss different views as to power of the Government to engage in foreign or interstate commerce. (65)
3. How has Congress regulated foreign commerce? (66)
4. What does commerce among the States mean? (67)
5. How is it usually spoken of? (67)
6. Give some instances of how Congress regulates interstate commerce. (67)
7. Discuss railroads and Interstate Commerce Commission. (67a)
8. What is said of free trade between the States? (67b)
9. Can a State impose an inspection fee on shipments into it? (67c)
10. Can it prevent entrance to persons or animals? (67c)
11. For what purpose? (67c)
12. Can Congress control trade or travel wholly within a State? (67d)
13. How does Congress regulate the Indian trade? (68)

CHAPTER VIII.

POWER TO BORROW MONEY.

69. Necessity of Power.—The Congress is also given power “to borrow money on the credit of the United States.” Without power to borrow money no great government could at times sustain itself. In times of war its expenses rapidly increase and its revenues rapidly decrease. War disturbs business and cripples trade. It decreases the people’s capacity for production, and lessens their opportunity to sell the things they do produce. Commerce between nations is demoralized and dwindles away, for each nation at war tries to sink or capture the ships of its enemies. These things lessen the amount of imports and to that extent cut down the revenue derived from imposts. It would add grievously to the people’s burdens to try to meet this loss by a commensurate increase in excises and direct taxes, for the loss of their foreign trade lessens their prosperity at home. A lack of power in Congress to borrow money at such times would leave it unable to “provide for the common defense.” In other times of distress, such as financial panics or extensive droughts, it may be wise for the Government to borrow money, for to try to replenish the treasury by increased taxation would be to lessen the people’s capacity to pay their own private debts, and supply their own necessities; and to carry to speedy completion a great governmental enterprise, whose benefits will extend through generations and even centuries, like the building of the Panama Canal, it is proper for the Government to borrow money.

70. Bonds.—Congress usually exercises this power of borrowing money by authorizing the President to issue and sell the bonds of the United States, which are simply the Government’s written promises to pay at some future time.

These bonds thereby become debts that must be paid or renewed when they become due, and the money with which to pay them must be raised by some of the methods of taxation discussed in Chapter VI. The bonds if payable in some future year bear interest, and are made payable at the option of the Government at any time after five, ten or twenty years after their issue, but the holder cannot demand payment for twenty or thirty or forty years. Thus they are called five-twenty, ten-thirty or twenty-forty bonds—for example, at any time after the end of ten years the Government can pay off a ten-thirty bond, but if the interest is regularly paid the holder cannot demand payment until the thirty years have elapsed. By pursuing this method the Government can either pay off the bonds at any time after the end of the first period, or after that use the intervening time before they become due to renew them at a lower rate of interest. Most of these bonds, now amounting to over twelve hundred million dollars and once to over two billions, were issued to obtain money wherewith to carry on the Civil War, or in renewal of bonds then issued. But the first bond issue was made long before the Civil War, for on February 8, 1813, during our last war with Great Britain, Congress authorized the President to issue and sell sixteen millions of bonds, the money to be used in meeting any expenses of the Government, which then were unusually large. The bonds issued to carry on the Civil War were at first issued for short periods, and the predominant rate of interest was five or six per cent, but as the country recovered from the ruin wrought by that war they were renewed at lower rates of interest, so that the issues of two hundred millions during the Cuban War were made to bear only three per cent, and were for a period of ten-twenty years. But all the Government bonds were not issued for war purposes. More than two hundred millions were issued between 1893 and 1896 in exchange for gold with which to redeem greenbacks and other Treasury notes, which

according to their terms were redeemable in coin whenever presented to the Treasury, and others for the same purpose were issued long before that and still others have been issued since; and about 375 millions have been authorized first and last for the building of the ship canal across the Isthmus of Panama.

71. United States Notes.—If the Government's promises to pay are payable on demand or whenever presented to the Treasury, they do not usually bear interest, and are not denominated bonds, but "United States notes," because in that form they are much like the ordinary promissory notes of private citizens. They are popularly called "greenbacks," because the devices on their backs were printed with green ink. A twenty-dollar note simply reads: "The United States will pay to bearer twenty dollars."

Notes of the United States were first issued in the War of 1812, and again in the Mexican War, and on May 21, 1838, Congress authorized an issue of five millions of such notes "to meet the current expenses of the Government." Between 1812 and 1861 there were ten or twelve issues of notes, usually in amounts of five millions each, and in all over fifty millions. Nearly all of them were issued to run for only one year, and were made receivable in payment of taxes due the Government and by its officers in payment of their salaries. But they were not made a legal tender in the payment of private debts, nor was it thought in those times that Congress had power to make them, or anything except gold and silver, legal tender.

The next great issue of the United States notes began at the outbreak of the Civil War. They were issued for the purpose of creating a quick emergency fund for raising and equipping an army. Many of those then issued, as well as all those issued prior thereto, bore interest, and were in all respects bonds except that they were made to run for only a short time and were in small denominations, so that they

could be the more readily sold and to a larger number of persons. As the expenses of the war rapidly rose, Congress again and again resorted to this method of sustaining the Government. From the outset of the war it made its notes receivable in payment of all debts due the Government, and soon they were used to pay soldiers and sailors for their services and to purchase their supplies, and as the Government found itself in 1863 in the throes of a death-struggle it took the far-reaching step of making these notes a legal tender in the payment of all debts, public and private, except duties on imports and interest on Government bonds, and thus put them into circulation to do the work of money, and hence they are also known as "legal tender notes." The amount of these notes soon after the war was greatly decreased under an act which authorized the Treasury to issue to the holder in exchange for them an equal amount of long-time interest-bearing bonds. Thus all the interest-bearing notes were retired or destroyed; but in 1868 Congress prohibited the President from retiring and cancelling the remaining ones, and by a later law made them redeemable in coin whenever presented to the Treasury, and in 1900 made them redeemable in gold only. The law which prohibits their retirement and cancellation has been re-enacted again and again, and is still in force. Whenever these notes are presented to the Treasury they are taken up and paid off in gold and are "reissued and paid out and kept in circulation," and hence the amount thereof since 1878 has remained fixed (\$346,681,016) and will continue to be until Congress authorizes the Treasury to pay off and destroy them.

Questions on Chapter VIII.

1. What is the language of the Constitution as to borrowing money?
(69)
2. Why should Congress have this power? (69)
3. Name some instances when it seems necessary to borrow money.
(69)

4. How does Congress usually exercise this power? (70)
5. What are bonds? Are they debts? How are they paid? (70)
6. Describe the usual interest-bearing bonds. (70)
7. For what purpose were they issued? (70)
8. For what other purpose have bonds been issued? (70)
9. Suppose the Government's debts are payable on demand? (71)
10. Discuss a greenback or legal tender note. (71)
11. When was the next great issue of notes? (71)
12. For what were they first receivable? (71)
13. For what were they made receivable in 1863? (71)
14. What was done in regard to them at the close of the war and in 1868? (71)
15. In what were they later made redeemable, and in 1900? (71)
16. Why is the amount fixed? (71)

CHAPTER IX.

POWER OVER COINAGE, WEIGHTS AND MEASURES.

73. The Coinage of Money.—Another clause of section 8 of article I of the Constitution says that “the Congress shall have power to coin money, regulate the value thereof, and of foreign coins, and fix the standard of weights and measures.” In connection with this clause should be read and considered another (Art. I, sec. 10, clause 1) which says that “no State shall coin money, emit bills of credit, or make anything but gold and silver coin a tender in payment of debts.” These two clauses contain everything found in the Constitution on the subject of money.

It should be observed that neither clause specifically says that the Congress shall not have power to make anything but gold and silver coin a tender in the payment of debts; what it does specifically say is that no State shall have that power. It is clear that no State can issue paper money. For a long time it was also contended that these two clauses were intended to mean that the United States could not issue paper money; that such meaning is found in the fact that the first clause says that Congress shall have power “to coin

money" and the word "coin" is applicable only to gold and silver, and that the second clause says no State shall "emit bills of credit," which was intended to be a condemnation of paper money in any form. The contention has again and again been a very sharp and disturbing one in American politics. But more than a half century ago Congress authorized the Government of the United States to issue notes and made them a legal tender in the payment of private debts, but in late years has attempted to make them as good as gold by requiring them to be paid with an equal amount of gold whenever presented to the Treasury for payment; and, hence, the question of whether Congress has power to make the mere notes of the Government a legal tender in payment of private debts is no longer as acute as it was in former years, since the Congress, by making the greenbacks redeemable in gold, has in effect come back to the theory that only gold or silver is a final legal tender for such debts. And it has pursued almost the same theory as to bank currency, for while it has authorized certain banks to issue their notes, to be passed as current money, it has taken such precaution as compels them to be finally redeemed in gold, as will be seen in the subsequent sections of this chapter.

73a. Exclusive and Discretionary Powers of Congress.—

The power of Congress to coin money is an exclusive one; that is, it is one which Congress alone can exercise. No State could exercise it, whether Congress refused to do so or not, for the Constitution clearly says that "no State shall coin money." Not so, however, with weights and measures. Congress has power to "fix the standard of weights and measures," and this is a power which it may or may not exercise, as it chooses, and until it passes laws on the subject the States may do so for themselves, but when it does that no State can longer do so.

No better illustration of the difference between a mere grant of a power and the exclusive right to exercise a power

granted to the Federal Government can be found in the Constitution than is contained in these two clauses. It was more than three years after the Government under the new Constitution was inaugurated before Congress passed a coinage law, but during that time no State could coin money or regulate foreign coins. On the other hand, although Congress has always had the power, it has never undertaken to enact a law fixing "the standard of weights and measures" except for the transaction of its own business, and hence each State has passed laws on the subject for itself, and these laws are binding, and will continue to be until Congress nullifies them with laws of its own.

Many powers have been granted to Congress which it has never seemed expedient or wise to exercise, and hence the States have gone ahead passing laws on the subjects, and these have always been upheld and will be until Congress exercises its power to pass a general law on the particular subject, and then so much of the State laws as are in conflict therewith must yield to the superior authority of Congress.

For instance, the lands obtained by the purchase of Louisiana Province and by the cession to the United States of the Northwest Territory, became public lands, which the Government had surveyed for the purpose of disposing of them to settlers; it, therefore, had them surveyed by its own surveyors, and in order that there might be uniformity in such surveys it directed that the acre should be the unit of measure for its lands, and that such lands should be surveyed into sections, townships and ranges, each containing a certain number of acres, and thus it made the table for "square measure" the "standard of measure" for land. It has also prescribed that the Troy pound shall be the standard of weights at the mints, in measuring gold and silver. These things it has done because the selling of the public lands and the coinage of money are its business. But it has not under-

taken to say how many pounds shall make a bushel of wheat or corn or oats, nor whether these things shall be measured by bushels or pounds or hogsheads, but has left those matters to the States to be regulated as each may think will best serve the interests and business of its own people; and this it has done because the laws of the various States on these subjects are almost exactly the same. But if some States should declare that sixty, and others that sixty-two, and others that fifty-eight pounds of wheat should constitute a bushel, and thereby destroy the rule of uniformity, and bring confusion into the marts of trade, Congress would likely interfere by enacting a law applicable to all parts of the country, declaring just how many pounds of wheat should constitute a bushel; and that it would do under this clause which gives it power to fix the standard of weights and measures, and under the other clause of the Constitution which vests it with power to regulate commerce among the States.

74. Necessity For.—The power to coin money is placed in Congress in order to facilitate commerce among the States and with foreign countries. In order that trade may be easily carried on, a dollar should have the same value throughout the whole country. Money is the medium of exchange, and coin is the standard of value. It is the measure by which the value of other things is determined. It is necessary for smooth-going trade that that measure of value be the same size in all the States. In the Colonial days the shilling, which was the coin in general use, in several colonies was $16\frac{2}{3}$ cents, and it took six of them to make a dollar; in others, it was $12\frac{1}{2}$ cents, or 8 to a dollar; in others it was $13\frac{1}{2}$ cents; and in still others, $21\frac{3}{7}$ cents. This difference in the size of these small coins impeded trade among the colonies; and created confusion in the public mind. So long as each State could determine for itself the size of its own coins there would be no uniformity in the moneys of the country. On the other hand, if the coins were the same throughout the land, they would

not only facilitate trade among the States, but aid in consolidating the States into "a more perfect union." Thus, we have two reasons for the exercise by the national Government of this power to coin money: (1) to establish uniformity in the moneys of the country and thus facilitate trade among the States and with foreign countries, and (2) to strengthen the bond of fraternal union. The exercise of this power has quietly done much to make the United States a consolidated nation.

74a. The Decimal Coinage System.—In the Colonial days sales were made and contracts were expressed in English money; that is, in pounds, shillings and pence. It is not easy for the average man to make calculations in those things. The decimal table, in which the figure ten is the multiplier or divisor, is easier. So after Independence was won and America had to adopt coins of her own, Thomas Jefferson, in 1783, brought forward in the Continental Congress a measure by which the dollar was to be made the unit of value, and other coins should be one-tenth or one-hundreth of a dollar or ten times a dollar, and the prices of things should be expressed in dollars and cents. It was approved by that Congress in 1786, and so this monetary table had been established in the most of the States before the Constitution was adopted; and when the Congress, under the clause of the Constitution which gives it power to coin money, enacted the first coinage law on April 2, 1792, it accepted this table as an established fact. It made the dollar the unit of value, and provided that the gold coins should be eagles, double eagles and half eagles, or ten, twenty and five dollars each, and that the silver coins should be dollars, half dollars and dimes; and all these have ever since been our national coins. Later a silver quarter, or a twenty-five cent piece, and copper pennies, or one-cent pieces, and a nickel or five-cent piece, were added. At one time, about the close of the Civil War, United States notes in denominations of twenty-five cents

and fifty cents were in circulation, but in late years no notes in denominations of less than one dollar have been issued, either by the United States or by any bank.

No other nation has coins in which the value of things can be so easily calculated and expressed. It is easy to calculate in tens and multiples of ten. To devise coins in which the value of all kinds of property can be so easily calculated and written, and adapted to the smallest transactions as well as the largest, was statesmanship of the highest order.

75. Coining Money.—Congress has taken exclusive control over the coinage of money. It has from the first declared that the coins shall be gold and silver. It has declared how many grains of gold each gold coin shall contain and how much alloy, and how many grains of silver the silver dollar shall contain and how much alloy. It has prescribed certain words and devices to be placed on the coins, and it has established mints where alone the coins may be struck off, and declared that no private person or company shall make any coins like them. Any person from any part of the world can take gold bullion to one of these mints and have it turned into gold coins, and the coins when handed back to him are lawful money of the United States, and a legal tender in the payment of all debts. This is called "free and unlimited coinage of gold." Formerly the owner of silver bullion could in the same way take it to the mint and have it turned into silver dollars, but this is no longer true. Now whatever silver bullion is turned into silver coins is first bought by the Treasury, and then coined in such amounts as the Congress may direct. But the Congress does not authorize the Treasury to buy any gold bullion for the purpose of having it coined. It simply provides the mints to which the owner of the gold can take it and have it coined.

76. The Size, Parity and Ratio of Coins.—The dollar, whether made of gold or silver, has at all times since the adoption of the Constitution been the unit of value. But since

1873 the gold dollar has been the "standard unit of value," and on March 14, 1900, Congress by law declared that "all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard;" so that the United States has pledged its honor that all silver dollars coined by it and all paper money issued by it shall be worth exactly the same number of gold dollars, and it keeps this pledge by exchanging at the Treasury gold coins for silver dollars or the paper money whenever any person having the latter wishes to exchange them for an equal amount of the former; and in order to be able to always make such exchanges on demand it keeps on hand in the Treasury a fund of one hundred and fifty million dollars in gold to be used solely to redeem with gold any silver dollars or paper money coined or issued by it; and if that fund becomes depleted and cannot be restored in any other way, it issues three-per-cent United States bonds and sells them for gold and adds the gold so obtained to this fund.

At the present time the silver dollar contains $371\frac{1}{4}$ grains of pure silver. It has had that number ever since the passage of the first coinage act on April 2, 1792. Its size has never been changed. The gold dollar was first authorized to be coined in 1849 and its coinage was stopped in 1890. It had 23.2 grains of pure gold. And while the gold dollar as such has passed out of use, the gold eagle, which contained ten times as much gold, or 232 grains of pure gold, is very numerous.

Standard metal is the product after the pure metal has been mixed with copper or other alloy, which must be added in order to make the coin hard and unbending. It is from the standard metal that the coins are made. Each coin is now about nine-tenths pure or "fine," and one-tenth alloy. The standard silver dollar, therefore, contains $412\frac{1}{4}$ grains of standard silver, and the gold eagle 258 grains of standard gold.

It will be observed that the silver dollar contains almost exactly sixteen times as many grains as the gold dollar. This is what is meant by the **ratio** of the coins being 16 to 1. It means that a silver dollar shall contain sixteen times as many grains of silver as there are grains of gold in a gold dollar. The ratio was by the first coinage law made 15 to 1, the law providing that "every fifteen pounds weight of pure silver shall be of equal value, in all payments, with one pound weight of pure gold." This ratio was changed in 1834 to 16 to 1, by decreasing the size of the gold coin, the gold eagle being reduced from $247\frac{1}{2}$ to 232 grains of pure gold, and such has remained its size ever since.

77. Amount of Money.—Gold and silver constitute more than two-thirds of the entire volume of moneys of the United States, the gold alone amounting to over two billions of dollars, and the silver coins to about seven hundred million, and all other moneys to something over one billion three hundred million. Prior to 1872 the entire volume of gold coined in the whole country amounted to less than twenty millions, but in late years its volume has rapidly increased; but its volume at any one time largely depends upon the state and volume of foreign commerce. Trade between nations is much like trade between two merchants when the time comes for balancing accounts; there will at times be a balance in favor of one, and at other times a balance in favor of the other, and the one who owes that balance must pay it. The balance of trade between nations is paid in gold; and if the value of our exports largely exceed the value of the imports there will be a large balance in our favor, and the volume of gold in this country will largely increase; but, if imports exceed our exports there will be a balance against us, and the volume of our gold will decrease. Again, citizens of this country may have so'd railroad and other bonds to citizens of another country, and the holders of those bonds may require payment when they become due, and that may cause

gold to go abroad. And as the volume of exports and imports, and the amount of foreign debts to be paid, vary with the years, so the volume of gold in this country varies, and is not exactly the same at any two periods. The amount of silver, on the contrary, remains almost stationary.

78. Gold Certificates.—Gold and silver coins have always been moneys of the United States. But the coins themselves are heavy and often inconvenient to carry. To overcome this inconvenience and keep them in constant use, Congress has provided for gold certificates and silver certificates. Under the law any person who has as much as \$100 in gold coins can take them to the Treasury of the United States, deposit them there and take out an equal amount of gold certificates, no more, no less. These certificates look much like greenbacks except the devices are printed in orange instead of green ink. They are simply receipts stating that there has been so much gold deposited in the Treasury for their redemption. For instance, a \$20 gold certificate reads: "This is to certify that there have been deposited in the Treasury of the United States twenty dollars in gold coin payable to the bearer on demand." The gold when so deposited is not used to pay any current expenses of the Government, but is held as a sacred fund for the redemption of the certificates whenever presented, and, hence, any holder of the certificates may present them at the Treasury at any time and get an equal amount of gold coin, and thereupon the certificates are destroyed. The certificates, therefore, in the hands of the people pass current as so much gold. They are more portable and convenient than the coins, and that is the reason for their existence.

79. Silver Certificates.—For the same reason the owner of silver dollars can take them to the Treasury, deposit them there, and take out an equal amount of silver certificates; in fact, there is better reason for this provision for silver certificates than for the one for gold certificates,

since silver coins in proportion to their value are heavier and bulkier than gold coins, a silver dollar being as heavy as sixteen dollars in gold. As a result, proportionately far more silver certificates are in circulation than gold ones. The amount of silver certificates is about five-sixths of the entire amount of silver dollars in existence, while the amount of gold certificates is about one-half the amount of gold coin. A five-dollar silver certificate reads this way: "This certifies that there have been deposited in the Treasury of the United States of America five silver dollars payable to the bearer on demand."

80. Denominations.—Silver certificates are in denominations of one, two, five and ten dollars, and one-tenth of the whole amount in denominations of twenty, fifty and one hundred dollars. Gold certificates are in denominations of not less than ten dollars, and at least one-fourth of the entire amount in not less than fifty dollars, and even a ten-thousand dollar gold certificate payable to order may be issued. Hence, the denominations of the two kinds of certificates somewhat correspond to the relative weights of the two kinds of coins.

81. Subsidiary Coin.—It never has been true in this country that the holder of either silver or gold bullion could have them turned into coins of less size than one dollar. No gold coin of less size than one dollar has ever been coined, and all silver coins of less size than one dollar have been coined by the Government itself, that is, it buys the silver bullion and has it turned into half dollars, quarters and dimes. These are called "subsidiary silver coins" or "fractional currency." They are necessary for small business transactions and to make exact change. To aid them the Government has also provided a five-cent piece called a "nickel," and one-cent pieces made of copper. The subsidiary coins now amount to almost two hundred million dollars.

82. Emergency Moneys.—The amount of gold and silver actually coined has never been sufficient to do the work required of a medium of exchange, and consequently at various times Congress has provided for temporary or emergency moneys to supplement these coins. These are (1) greenbacks or legal tender notes, which have already been discussed in section 71, and (2) bank notes.

83. National Bank Notes.—A bank whose notes are permitted by law to be used as current money is called a bank of issue. In all the larger cities, and in many of the smaller ones, there are institutions known as national banks. Congress has enacted laws permitting private citizens to organize a national bank by investing their money in its capital, and by prescribing the kind of banking business it may engage in. The Government permits a national bank to invest a part of its capital in two-per-cent United States bonds, and, by depositing these bonds in the Treasury as security that its notes will be paid, to "issue and circulate as money" an equal amount of its notes, which are by law made receivable by the Government in payment of all debts due it except duties on imports, and in payment of all debts owing by it to individuals except interest on the public debt, which is payable in gold. Thus they are made to pass current as money, although they are not legal tender in the payment of a debt owing by one private citizen to another, but are usually so tendered and received without question. A fifty-dollar national bank note reads about this way: "The Third National Bank of St. Louis, Missouri, will pay to bearer fifty dollars on demand. This note is secured by bonds of the United States deposited with the United States Treasury at Washington."

The Government levies a small annual tax on the amount of notes issued by a national bank, for the purpose of having on hand at all times a fund which may be immediately used to redeem the notes of any national bank that may fail; and

if such a bank fails, the Treasury sells the bonds that have been deposited with it by the bank, for gold, and replaces whatever part of the fund it may have used to take up and pay off the notes of the defunct bank, and turns over the balance, if any, to the bank's officers to be used in paying its other debts.

Thus, the national bank notes are in effect as valuable as an equal amount of gold, since they are upheld by an equal amount of bonds deposited in the Treasury, to be held as a sacred fund solely for their redemption. The bonds are themselves payable in gold, and the Government always pays its debts in full, and as the bonds are not taxable for any purpose they can always be sold at par for gold.

83a. Federal Reserve Notes.—For the purpose of forestalling financial panics and providing quick facilities for loosening up industrial congestion, Congress in 1913 enacted the Federal Reserve Act. Under its provisions the whole country is divided into twelve convenient districts, and in the chief commercial city in each has been established a Federal Reserve Bank, which must have a capital of at least four million dollars. Each national bank in the district must invest six per cent of its own capital in the capital stock of such bank, and thereby it becomes known as a "member bank;" and private citizens to a limited extent may become stockholders, and, if the laws of their State permit, a State bank or trust company may also become a member bank. A Federal reserve bank is peculiarly a bank of issue; it does not receive the money of private citizens on deposit and loan it out to other private citizens, as do other banks; its principal business is to buy the notes of merchants, farmers, manufacturers, stock dealers, grain elevators, importers and other persons who are carrying on the commerce of the country, which will be due in three or six months, and pay for them with its own notes, which it is authorized to issue, and which are receivable for taxes,

tariffs and all other debts due the Government, and are redeemable in gold at the United States Treasury.

At certain seasons of the year a large amount of money is needed to move the cotton, wheat, fruits and other crops from the South and West and other agricultural regions to the Eastern cities and foreign countries, and to supply that money placed a heavy burden on the banks located in the regions where these things are produced. Such money is needed only for short periods, usually only for ninety days, and rarely as long as six months; but to obtain it the local banks were compelled to borrow it in the Eastern cities or it was necessary for the Treasury to deposit the Government's money in them. The larger the crops the greater did this burden become, and hence the producers, because of the difficulty in getting quickly the money needed to move their products to the cities and foreign countries where they are consumed, did not obtain for them the prices to which they were justly entitled. At other seasons of the year, when the demands of trade require the movement of clothing, agricultural implements and other products of factories into the agricultural regions and foreign countries, large sums of money are needed for a short time by the owners of those factories, importers, exporters and wholesale merchants to facilitate the movement. Thus money at certain seasons of the year was drained out of one part of the country into another, and at other seasons flowed back, and banks were compelled either to withhold from their ordinary customers money needed to carry on their regular business, or to hold in reserve in their vaults large amounts of money to meet these extra trade demands which lasted for only short periods, and if they did that this extra reserve lay idle the rest of the year. It was to meet this and other like industrial conditions that the Federal reserve banks were established.

They can buy the notes of the owners of the products of factory or farm, which are to become due in a short time, by

exchanging their own notes for them, and then when these products are sold and the notes of the makers paid, an equal amount of bank notes are retired or destroyed. Thus the amount of such bank notes outstanding at any time in a district will depend on the demands of business in that district—in fact, upon the value of the commodities for the marketing of which they have been issued. The bank must at all times have either in its vaults or in the Treasury a sufficient amount of gold to pay all its outstanding notes as fast as they are presented for payment; and for obtaining the gold it can use its capital to buy gold or to buy and sell gold bonds of the United States. It can buy with its notes, from any member bank, notes secured by agricultural products or by goods, wares and merchandise, which have been previously purchased by such member bank; and thus the Federal reserve bank and all the member banks of the district constitute one great consolidated monetary system for quickening the marketing of its surplus products, and thereby adding to the gain to the producer that should accrue to him from such products; and by furnishing the money needed to move crops and the products of factories, the Federal reserve banks have largely lifted that burden from other banks, and made it unnecessary for national banks to keep in their vaults so large a per cent of their capital as a reserve to meet their liabilities in any emergency, and hence made it possible for them to loan more of their deposits to private citizens.

The notes of a Federal reserve bank are issued in denominations of five, ten, twenty, fifty and one hundred dollars, and a five-dollar note reads: "Federal Reserve Note. The United States of America will pay to the bearer on demand five dollars. This note is receivable by all national and member banks and Federal reserve banks for taxes, customs and other public dues. It is redeemable in gold on demand at the Treasury Department of the United States in the City of Washington, District of Columbia, or in gold or lawful

money at any Federal Reserve Bank. The Federal Reserve Bank of Kansas City, Missouri."

The amount of notes a reserve bank may issue is determined by the Federal Reserve Board, consisting of the Secretary and Comptroller of the Treasury, and five persons appointed by the President, none of whom can be a director or officer in any bank. The board is a constant check on all reserve banks, requires them to comply rigidly with the laws which prescribe just what kind of commercial paper they may buy and how they may invest their capital, and watches the business of the country to see what volume of notes each bank should issue in order to meet its needs.

84. Bills of Credit.—The Constitution provides that no State shall "emit bills of credit" or "make anything but gold and silver coin a tender in payment of debts." "Bills of credit," as here used, mean paper money, and "to emit bills of credit" is to issue the notes of the State redeemable at some future time, and cause them to circulate as money. In the days prior to the adoption of the Constitution every State had issued its notes, and provided that they should be received by all State officers in payment of their salaries and by tax collectors in payment of debts due the State. These notes originated in the inability of the State to pay its current expenses as they rapidly increased during the Revolutionary War. The State, therefore, attempted to run on credit, or to support itself by borrowing money. The notes were simply promises to pay so much money, and they were made redeemable in money within a certain number of years. As the State received them in payment of taxes and compelled its officers to receive them in payment of their salaries, other people also took them from the officers at their face value so long as they believed the State would be able to pay or redeem them in actual money, that is, gold or silver. But as the burdens of the war became heavier and the amount of these notes increased, and the State showed no ability to redeem them,

they became worth less than par, and in some cases not more than fifteen per cent of their face value. Then the State, apparently in an effort at self-preservation, took another very important step, just as our Congress afterwards did in regard to the greenbacks: it made its notes legal tender in the payment of all private debts, and thus attempted to force them into circulation as money, with an increased value.

The Constitution took away from the States the power not only to issue paper money, but also to make anything except gold and silver coin a tender in payment of debts. A State cannot compel a private citizen to accept greenbacks in payment of debts owing him, but it has been held by the Supreme Court that Congress may do so. If Congress had no law on the subject, the State could not compel the holder of your note to accept in payment anything except gold or silver coin, unless the note itself contracted that it might be paid in something else; but if the contract provided that it should be paid in something else (for instance, 100 bushels of wheat) the State could compel the holder to accept that other thing, or gold and silver coin, in payment. But Congress has provided that private debts may be paid in any lawful money, and it has made greenbacks and gold and (when not otherwise provided in the contract) silver dollars, lawful money.

But the provision prohibiting a State from emitting bills of credit does not mean that the State cannot issue its notes or bonds to be sold for money. It can borrow money whenever it wishes, and it can settle its debts with those it owes by issuing its notes to them in payment, if they are willing to accept them, but it cannot compel them to receive them, nor can it make the notes circulate as money.

85. Counterfeiting.—As a necessary incident of the power of Congress to coin money, it is also given the power "to provide for the punishment of counterfeiting the securities and current coins of the United States." Counterfeiting is the making or uttering of spurious or imitation money,

bank notes or notes or bonds of the United States. Sometimes dishonest and thieving persons try to make silver or gold coins out of some cheap or spurious metal so nearly like the genuine coins that ordinary persons will not readily detect their false character. This is counterfeiting, as is also an attempt to pass such counterfeits, and as is the making by private persons of greenbacks or other notes or bonds purporting to be issued by the Government or banks of issue, and as is the passing or selling of such imitation money.

Volume of Money.—The amount of money in the United States on February 1, 1916, as shown by the report of the Secretary of the Treasury, was as follows:

Gold coin (including bullion in the Treasury).....	\$2,328,421,835	
Standard silver dollars.....	568,271,655	
Subsidiary silver.....	189,099,208	
Total metallic moneys.....		\$3,085,792,698
United States notes (greenbacks).....	\$346,681,016	
National Bank notes.....	766,392,068	
Federal Reserve notes.....	219,370,000	
Total of paper moneys.....		1,332,443,084
Total moneys of all kinds.....		\$4,418,235,782
Total moneys in circulation.....		\$3,933,678,877
Total moneys in Treasury.....	277,853,117	
Gold held by Federal Reserve banks against notes.....	206,703,788	
Total moneys in circulation and held in reserve.....		\$4,418,235,782
Gold certificates.....	\$1,517,533,186	
Silver certificates.....	480,719,356	

Questions on Chapter IX.

1. Repeat the two clauses of the Constitution relating to money. (73)
2. Can a State make anything but gold and silver coin a legal tender? (73) What is said about the attempt of Congress to do so? (73)
3. How are Government and bank notes made as good as gold? (73)
4. Is the power of Congress to coin money exclusive? (73a)

5. What is meant by that? (73a)
6. Can a State fix the standard of weights and measures? (73a)
7. Can it do so after Congress has enacted a law on the subject? (73a)
8. Discuss the difference between an exclusive power and a mere grant of power as illustrated by the coinage of money and weights and measures. (73a)
9. Why is the power to coin money placed in Congress? (74)
10. What is money? What is coin? (74)
11. The effect of a variable shilling in the Colonial days? (74)
12. What two reasons, then, for the exercise by the national Government of the power to coin money? (74)
13. Discuss the decimal or monetary table. (74a)
14. What is the unit of value? (74a)
15. What are the gold and silver coins? (74a)
16. What provisions for coinage has Congress made? (75)
17. What is said concerning the free coinage of gold and silver? (75)
18. What is the standard unit of value? (76)
19. How are all moneys kept at a parity with gold? (76)
20. How many grains in the silver and gold dollars? (76)
21. What is standard metal, and the sizes of the coins? (76)
22. Discuss the ratio of the gold and silver coins. (76)
23. What is the volume of gold and silver coins? (77)
24. Upon what does the volume of gold largely depend? (77)
25. Discuss that, and tell why it is true? (77)
26. Discuss gold certificates (78) and silver certificates (79).
27. What are the denominations of these certificates? (80)
28. What is said of subsidiary coins? (81)
29. Why has Congress authorized emergency money? (82)
30. What two kinds of emergency money? (82)
31. Discuss national bank notes. (83)
32. How are they made as good as gold? (83)
33. Read very carefully what is said concerning Federal reserve banks, and then state in what way they aid commerce and other banks. (83a)
34. What does the Constitution say about bills of credit? (84)
35. Give the history of bills of credit in the States prior to the adoption of the Constitution. (84)
36. What power have the States as to issuing paper money and declaring in what things debts may be paid? (84)
37. Can a State still issue notes or bonds? (84)
38. What is counterfeiting? (85)

CHAPTER X.

NATURALIZATION AND BANKRUPTCIES.

86. Congress is also given power "to establish an uniform rule of naturalization and uniform laws on the subject of bankruptcies throughout the United States."

87. Naturalization is the act by which the rights and privileges of citizenship are conferred on persons born in other countries. When such a person is naturalized he becomes a citizen of the United States and of the State in which he resides. The laws under which he is naturalized were enacted by Congress, and are the same for all the States, and hence they constitute the "uniform rule."

Under them a foreigner, if "a free white person or an alien of African nativity or a person of African descent," may make application, signed in his own handwriting, to the clerk of any circuit court of any State or of any district court of the United States, declaring it is his intention in good faith to become a citizen of the United States; and two years thereafter he may be admitted to citizenship by any of those courts if at that time he is (1) able to speak the English language, is (2) not a polygamist or (3) an anarchist or opposed to organized government, and (4) has continuously been a resident of the United States for five years and for at least one year of the State in which the court is held. His residence during that time must be proved by the oath of other persons who are citizens, and he must himself under oath renounce forever all allegiance to every other sovereign, and especially to the country from which he came, and pledge himself true allegiance to bear to the United States. If he meets these conditions, and a few others of less importance, he is admitted to citizenship, and thereafter has all the

privileges and protection that the law extends to other citizens, and his wife and children who are at the time under the age of twenty-one years, if at the time of his naturalization they are dwelling in the United States, also by his naturalization become citizens.

88. Intention and Perfection.—The application to become a citizen is popularly described as “taking out the first papers.” In the law it is denominated the applicant’s “declaration of intention.” It does not admit him to citizenship. He must wait for at least two years before he can be naturalized, and may wait for seven years, and in no event can he be naturalized until he has resided five years in this country. If after he has filed his declaration of intention he dies before he has been admitted to citizenship, his widow and minor children may be naturalized without filing any further declaration. He may make his application at any time after he is eighteen years of age. He may make his application in one State, and be finally naturalized in another. And at the time of his naturalization the court, upon his request, may change his name. No person can be naturalized until after his petition for naturalization has remained on file with the court for ninety days, nor can he be naturalized within thirty days preceding any general election.

89. Who May Become Citizens.—The law of Congress is that “aliens being free white persons and aliens of African nativity and persons of African descent” may be naturalized. The Fourteenth Amendment to the Constitution says that “all persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” These two provisions fix the limits of citizenship. No Chinaman, no Japanese, nor other Mongolian, unless born in Africa, can be naturalized, because he is neither a free white person nor of African nativity. Free white persons, whether born in Europe, Asia, Africa, South America or elsewhere, may be

naturalized. Persons of African nativity or of African descent may be also, whether they came to us directly from Africa or from the isles of the sea or Canada or elsewhere. But the yellow or copper-colored peoples are not permitted to become naturalized; only free white persons, and persons who were born or whose ancestors were born in Africa. This provision in practice confines naturalization to aliens belonging to the white and black races, and shuts out those belonging to the yellow or copper-colored races of Asia and Australia and elsewhere except Africa. But all persons born in the United States except uncivilized Indians are citizens without naturalization. Indians of Oklahoma are citizens, but most other Indians, though born here, are not citizens, because they seem incapable of adopting the pursuits of civilized life, and are the "wards of the nation," in that the Government provides them with food and clothes, and they are therefore permitted to have their own tribal governments, and in most things are not "subject to the jurisdiction of the United States." But Chinese and Japanese and Mexican children born in this country, whether their parents were naturalized or not, are citizens, if such parents were permanent residents here. And persons actually born outside the limits of the United States are considered to have been "born in the United States" if their parents were American citizens at the time of their birth and temporarily residing abroad.

90. Citizens and Voters.—It is necessary to distinguish between citizens and voters. The Constitution and the Congress of the United States declare who are citizens, but the States say what citizens may vote. Voting is not a natural right; it is a privilege granted by government. No man has a right to vote simply because he is a man, nor simply because he is a citizen; one has that privilege simply because the government says he shall have it. The wives of naturalized or native men are citizens, but in most States they are not voters. Minor children born in the United

States and minor children of naturalized persons born elsewhere, are citizens, but they are not voters. And in some States men over twenty-one years of age, whether naturalized or natives, are not permitted to vote, because they cannot read, or have not paid taxes, or have been convicted of crime.

And in some States "every male person of foreign birth who may have declared his intention to become a citizen, not less than one year nor more than five years before he offers to vote, if twenty-one years of age," may vote without waiting until his naturalization has been perfected. This strange provision, which is a part of the Constitution of Missouri and of some other States, permits persons to vote for four years who are not citizens, and who may never become citizens, for all it requires is that the foreign-born man shall have resided in the State one year and one year before the election shall have taken out his first papers, and if he has done that he can vote, not only at that election, but at each subsequent election for the next four years. After that he must perfect his declared intention to become a citizen or cease to vote until he does so. But he is not compelled to perfect that intention; he may reside in this country the rest of his life without becoming a citizen, for until his naturalization is completed he is not a citizen.

But let no one despise his citizenship because he cannot vote. The right to vote is not the greatest benefit of citizenship; it would amount to nothing if, in spite of its exercise, the government were unjust and weak and tyrannical; it is only a means for holding the government in lines of justice and strength, and for placing competent, just and upright persons in public office and for helping the nation to be serviceable to mankind; and while it is the most direct and satisfactory way for accomplishing those beneficent results, it is not the only means. A great benefit of citizenship is that the citizen, whether he can vote or not, can invoke the powers of this Government for his protection anywhere in the

world. Its primary value, perhaps its chief value, is that it guarantees to him unmolested liberty, the enjoyment of his property, and the right to engage in gainful occupations. He may not have been given the privilege of voting, but he can live in peace, his person may not be violated, he can freely write, freely speak, and freely worship; he can work and enjoy what he produces, he can own land and has the same property rights and other civil rights as does the citizen who votes. To be a citizen of a just government which is strong and wise enough to guarantee to all her citizens their Heaven-born rights to life, liberty and the pursuit of happiness, is of itself a great boon; and the principal reason that citizens should have the privilege of voting is that they may so shape the government that it will unmistakably guarantee those rights to all of them alike.

But while all these things are true it should be remembered that the Government, both state and national, belongs to all its citizens alike, and hence it should not deny the privilege of voting to any class of citizens who desire it and will use it intelligently and honestly, for otherwise it may be unfair, and deny to them equality of right and opportunity.

90a. Immigration.—For a long time after the adoption of the Constitution America was spoken of as “the home of the brave and the land of the free;” and all persons, especially those who were fleeing from the tyranny and political oppressions of the nations of Europe, were welcomed to make their homes here, with few restrictions upon their coming. But in late years many of the immigrants have not been political refugees attracted hither by American liberty, but lawless persons who sought new fields for continuing their criminal careers. Anarchists, who hate all government and bind themselves by secret oaths to destroy it, have come. Ignorant paupers, beggars, persons afflicted with dangerous contagious diseases, and adventurers bent on cheating and defrauding, have been brought or sent here, or came of their

own choice. They came in such large numbers that the peace and safety of our own citizens began to be endangered, and to stop them Congress has enacted rigid immigration laws, and sought through them to put a stop to the coming of all undesirable persons. They absolutely prohibit alien criminals, anarchists, paupers, beggars, persons having any dangerous contagious disease, persons coming under a contract to engage in certain employments after their arrival, and Chinese laborers, to enter the United States; and upon all immigrants permitted to enter they fix a "head tax" of about four dollars each, to create a fund out of which are paid the expenses of preventing those not entitled to enter and of deporting those who have wrongfully gained entrance.

The trend of modern legislation is to permit no immigrant to enter the United States who cannot read in some language; but to apply such a rule to all foreigners alike would be to exclude some persons who flee to us to escape political and religious persecutions abroad—persons who in their own land have been denied education and religious freedom by a tyrannical government and whose only offense has been to resist oppression and to cry out for liberty and equality of right and opportunity—persons to whom it has always been the pride of our people to extend a welcoming hand. It is not the policy of the Government to deny them immigration. So that while the laws exclude most immigrants who cannot read, they usually contain exceptions that permit persons to come who are fleeing from political persecutions, though they can read in no language. Besides, naturalized citizens may send for and bring to this country their aged parents and minor brothers and sisters who cannot read, and usually an immigrant who can read is permitted to bring with him his wife and minor children who cannot. In other words, while the immigration laws prescribe an illiteracy test, it is so modified as not to work oppression or cruelty.

91. Bankruptcies.—A bankrupt is an insolvent debtor, or one about to fail in business because of an inability to pay his debts. The purpose of a bankrupt law is to enable him to be discharged from his debts by turning over to the court all his property to be divided ratably among those he owes. The principle behind such a law is (1) that if a debtor owes a number of debts, all equally just, and cannot pay all, it is not right that all his property be seized to pay the debt of one or two, but that all should have a ratable share in his property; and (2) having failed, and having surrendered all his available property to pay his debts, he should be permitted to begin over again unburdened by his past debts. Such a law, therefore, permits him to go into court and make an exhibit of the property he owns that can be used for paying his debts, and ask the court to turn it into money and divide up the proceeds among all his creditors, giving to each his proportionate share, and, that having been done, that he be discharged from any further payment of such debts, and be permitted to start anew, with all his prior debts cancelled.

92. Kinds.—There are two classes of bankrupts, voluntary and involuntary. The **voluntary** bankrupt is any debtor who of his own motion goes into court and prays to be discharged from the payment of his debts. If he shows himself hopelessly in debt, the court will grant his prayer, however small his debts or whatever may be his business. The **involuntary** bankrupt is the debtor whose creditors force him into bankruptcy. "Any natural person, except a wage-earner or a person engaged chiefly in farming or the tillage of the soil, or any partnership, or any corporation, engaged principally in manufacturing, trading, printing, publishing or mercantile pursuits, owing debts to the amount of one thousand dollars or over, may be adjudged an involuntary bankrupt," upon a showing that he has concealed or disposed of his goods in a way to delay or hinder or defraud his creditors.

93. How Far Applicable.—Whether the procedure be voluntary or involuntary, the law does not allow the bankrupt's homestead to be sold to pay his debts, nor his other property which by State laws is exempt from the sheriff's levy. But there are certain debts which the law does not relieve the bankrupt from paying. He cannot be discharged from paying a debt which originated in fraud, nor one due by him as administrator to the heirs of a deceased person, nor one due by him for taxes, nor one due by him for money placed in his hands to be held by him as trustee for the use and benefit of others, but which he has lost or squandered. For all these debts he remains liable until they are paid; to permit him to cancel them would be to encourage him by law to be dishonest.

94. History of Bankrupt Laws and Necessity For.—The power given to Congress "to establish uniform laws on the subject of bankruptcy throughout the United States" is one which Congress has rarely exercised. The first law on the subject was passed in 1800 and repealed three years later; the next in 1841, and repealed within eighteen months; the next, passed in 1867, had a little longer life than its predecessors, for it was not repealed for eleven years; the next came in 1898, and is still in force. The first three were unpopular, and for three reasons: first, there was a general belief, grounded upon experience, that they were a mere sponge to wipe out indebtedness, not only of honest debtors, but of dishonest ones as well; and that instead of proving of real value to creditors, they encouraged the contracting of debts and lessened the dread of debt; second, the waste and expense of proceedings in bankruptcies, the fees of the commissioners and other officers absorbing much of the fund; third, the confusion and litigation resulting from a conflict of such laws with State laws on the same subject. But the law of 1898 has so far worked with more satisfaction. Under it the proceeding is speedier than under the former ones, nor is it

so expensive and wasteful. Besides, the necessity for such a law is now more apparent than formerly. Railroads have brought business communities close to each other; trading between citizens of different States is constantly increasing. "Uniform laws on the subject" are, therefore, made more and more necessary for easy-working business. But it should also be remembered that Congress has performed its full duty in the matter when its laws result in such uniformity. It should exercise this power only when it is clearly necessary for peaceful and prosperous commerce among the States. Unless the laws of the various States are in hopeless and hurtful confusion, there is no necessity for Congress "to establish uniform laws on the subject of bankruptcies."

Questions on Chapter X.

1. What does the Constitution say of naturalization and bankruptcies? (86)
2. What is naturalization? (87)
3. By whom were naturalization laws enacted? (87)
4. Who may be naturalized? (87)
5. How? (87)
6. What must he renounce and pledge? (87)
7. What does he gain by being naturalized? (87)
8. By his naturalization do his wife and children become citizens? (87)
9. How is the application usually described? (88)
10. Does it admit the applicant to citizenship? (88)
11. When may he become a citizen? (88)
12. What is said about the place of naturalization? (88)
13. The change of the applicant's name? (88)
14. Can you give a reason for requiring him to keep his petition on file for ninety days? And why should he not be naturalized within 30 days preceding an election?
15. What two provisions fix the limits of citizenship? (89)
16. What persons may and what may not be naturalized? (89)
17. What persons born in the United States are citizens? (89)
18. Distinguish between citizens and voters? (90)
19. Are the laws as to the right to vote uniform? (90) Why? (90)

20. Discuss a strange provision in Missouri Constitution. (90)
21. What may a citizen do, and what rights claim, though not a voter? (90)
22. Do you think anyone should be given the right to vote who cannot or will not intelligently and honestly vote?
23. Who were formerly permitted to immigrate to America? (90a)
24. Why was it necessary to restrict these privileges? (90a)
25. Whom do the laws now exclude? (90a)
26. What is a head tax? (90a)
27. What is the trend of legislation as to illiteracy? (90a)
28. Are there exceptions? (90a)
29. What is a bankrupt? (91)
30. What is the purpose of bankrupt laws? (91)
31. What is the principle behind such laws? (91)
32. What does such a law permit the bankrupt to do? (91)
33. Discuss a voluntary and an involuntary bankrupt? (92)
34. Can the homestead and other exemptions be sold to pay the bankrupt's debts? (93)
35. Read the history of bankrupt laws. (94)

CHAPTER XI.

THE POST OFFICE.

95. Postal Department.—The Constitution gives Congress power "to establish post offices and post-roads." The exercise of this power has been one of the strong forces in unifying and assimilating the American people. A uniform system of speedily carrying letters, papers, magazines, books and other small articles to every part of our country and to foreign lands, at small cost, has been patiently worked out, and as a result of this means for the general diffusion of intelligence, not only has commerce and every kind of industry been quickened and facilitated, but the printing of newspapers, magazines and books has become profitable and a reading habit encouraged, so that the people have come more and more to know and understand each other, to have their sectional prejudices dissipated, to take a more intelligent and brotherly interest in each other's welfare, and to

become more and more alike in their social customs and in their religious and political views. So we may say that the postal system has been a powerful agency in solidifying the American people into a homogeneous and enlightened nation.

96. Post Routes.—Under this clause of the Constitution the Government could build post-roads of its own and hold them for its exclusive use; but it has rarely undertaken to do that, and for two reasons: First, it has generally been admitted, from the time the Constitution was framed, that it was not intended by this clause to give Congress power to build post-roads at will, but only such as an efficient postal system clearly requires. Second, the public roads established under State law, and the railroads and boat and ship lines owned by private persons, afford sufficient ways, at much less expense, of supplying every community with mails, and therefore post-roads built and owned by the Government are unnecessary. Mails can be carried on trains, boats and hacks that carry passengers. It would be very expensive for the Government to build and own railroads and boats and rock roads for the sole purpose of carrying the mails, and if it undertook to lessen the expense by carrying passengers and commodities it would thereby enter into competition with private citizens engaged in a like business—a thing it is generally agreed a popular government cannot justly do. The Congress has, therefore, by a general law, declared that all railroads, all navigable rivers and other waters of the United States, all canals, all pike and toll roads and all public roads, are post-roads, and then authorized the Postmaster-General, who is the chief officer of the Postal Department, “to establish post offices at all such places on post-roads as he shall deem expedient,” and to contract for the carrying of the mails along such post-roads. He contracts with railroads, steamboats and ships, and the owners of hacks and horses, to carry the mails at regular intervals, each day or each week. The Government furnishes bags and pouches in which the mails

are carried, and charges all senders of mail the same rates for carrying their letters and packages. It appoints a postmaster for each post office, and furnishes him as many assistants as he needs for collecting, forwarding and delivering the mails, and pays him and them for their services. In the larger cities, and more and more in the smaller ones, it builds and owns its own post offices, but in other places it rents private buildings for offices.

In late years, Congress is being urged to assist in building permanent roads along which the mails are carried. Public roads are public highways, owned by no one, but established for the use of the public, and on which every one, including a mail carrier, has a right to travel. The Government cannot rent them, neither can any other person, yet it uses many of them in carrying the mails, and they can be carried more swiftly, cheaply and frequently if the roads are smooth, solid and permanent. To construct such roads costs much money, and there is a growing sentiment that the costs of their construction should be borne in part by the Government. The Congress has power, if it desires, to appropriate money to such a purpose, for the power given it by the Constitution "to establish post offices and post roads" authorizes it to build its own post roads, or to aid with money the State or local communities to build the public roads along which the mails are carried. And as a matter of fact, Congress in 1916 appropriated seventy-five million dollars to be divided ratably among the States and used within the next five years in constructing and improving public roads, in co-operation with the State or local communities, which, in order to obtain aid from the fund, must spend an equal amount on the roads designated for improvement.

97. Classes of Mail Matter.—Allailable matter has by law been divided into four classes: first, written matter, such as letters and postal cards, whether written by pen or typewriter, on which the postal rate for letters is two cents

for each ounce in weight or fraction thereof, and one cent for each postal card or post card; second, periodical publications, such as newspapers and magazines, for which the carrying charges are one cent a pound when sent by the publisher; third, miscellaneous printed matter, such as pamphlets and circulars, and newspapers and magazines sent by others than the publisher, in unsealed packages, for which the postal rate is one cent for each two ounces; and, fourth, books, merchandise, products of farm and factory, and all other articles classed as domestic parcels post, for which the rates vary according to the weight of the parcel and the distance it is to be carried. The rate for carrying an article weighing less than four ounces, any distance within this country, is one cent an ounce, unless it be a book, and if a book weighing less than eight ounces the rate is one cent for each two ounces. The rates for all other parcels are pound rates, and vary from five cents for carrying a parcel weighing one pound fifty miles, to 54 cents for carrying one weighing 50 pounds 150 miles and \$2.40 for carrying one weighing 20 pounds 1800 miles or more.

The postal charges for carrying second class matter must be paid in money; for all other classes they are paid by attaching stamps bought from the Government. The rates for the first three classes are uniform throughout the United States, and are the same whether the posted article is to be carried to the next town or to the furthest postoffice in this country, or to Alaska, Hawaii, the Philippine Islands, Porto Rico, or other island possessions of the United States; and for parcels of the fourth class, the rates vary only as to distances, the greater the distance they are to be carried the larger the rates. All rates are, of course, subject to be changed at any time by act of Congress.

98. Classes of Postmasters.—Postmasters are also divided into four classes. The first class embraces those whose annual salaries are three thousand dollars or more; the second

class, all those whose salaries are less than three thousand, but greater than two thousand; the third class, all those whose salaries are less than two thousand, but not less than one thousand; and the fourth class, which includes far more than all the others, embraces all those whose annual compensation is less than one thousand dollars. All postmasters of the first, second and third class are appointed by the President, with the consent of the Senate, and hence their offices are called "presidential post offices;" all postmasters of the fourth class are appointed by the Postmaster-General, or one of his numerous assistants, and need not be confirmed by the Senate. All postmasters are appointed for a term of four years, and may be sooner removed for cause.

Of late years the Civil Service regulations have been extended to fourth class postmasters, in pursuance to which all applicants for appointment to any fourth class office must submit to the same examination, and then one of the three obtaining the highest grades is appointed; and the examination is open to members of all political parties, including the existing postmaster. The result is that these postmasters are no longer chosen because of their political influence or their services to their parties, but from among those whom the examination shows to be best qualified to perform the duties of the office. It may even occur that the one appointed may belong to a different political party from that of the President, for no one of the three who stand the best examination may belong to his party; but if any one of the three does, there is nothing in the regulation that prevents that one from being appointed.

The Civil Service regulations do not apply to the appointment of a postmaster to a presidential post office; the applicants for appointment to such an office are not required to submit to an examination, but the President may appoint whomsoever he wishes. But those regulations do apply to nearly all the numerous assistants in such an office; and their

official tenure is not limited to four years, but they are usually permitted to hold their positions during good behavior and so long as they render efficient service. And the President's choice must receive the approval of the Senate before he can become postmaster of a presidential office.

99. Free Delivery.—For the purpose of speedily getting the mails to the people, letter carriers are employed in every city of fifty thousand population or over, to make free delivery of the mail at the doors of those to whom it is addressed, as often as the public business may require it, which is usually not less than twice each week day. They may also be employed, and usually are, in every city containing ten thousand inhabitants or at any post office whose gross receipts reach ten thousands dollars a year; and this free delivery service is now gradually being extended to all post offices of the second and third class. These carriers wear a uniform dress prescribed by the Postmaster-General, and some of them in the very large cities, and in sparsely settled outlying suburbs, are mounted on horses. Throughout any free delivery city mail boxes are provided where the people may deposit their mails without going to the post office.

And a **special delivery** system has been provided for the prompt delivery of letters on their arrival at a post office. For a special ten-cent stamp attached to the letter in addition to the usual two-cent stamp, or for ten cents' worth of ordinary stamps in addition to the customary postage if the words "Special Delivery" are placed upon the letter, a special messenger employed for the purpose will deliver it to the person to whom it is addressed, immediately on its arrival at a city delivery office at any time between seven o'clock in the morning and eleven at night, or on its arrival at any other office at any time between seven in the morning and seven in the evening, or until the arrival of the last mail, provided it arrives before nine o'clock. Any such letter arriving during the night is delivered promptly after seven o'clock

next morning. Provision is also made for special delivery of letters to persons residing within one mile of a post office or within one-half mile of a rural route.

100. Rural Free Delivery.—In 1896 Congress appropriated a small amount of money to be used by the Postmaster-General, as an experiment, in extending the system of the free delivery of mail to rural communities. The experiment proved attractive to the people, and within a few years what is known as "rural free delivery" had grown so fast that more than one-third of all the country had been laid off into rural delivery routes, and now more than a million square miles are daily reached by carriers of mail, and all families within that wide territory residing on post-roads receive mail at their front gates, or if they do not reside on such a road, at a box placed at the most convenient place along the road traveled by the carrier; and this delivery system is year by year being extended into every rural community having enough inhabitants to justify the expense. The carrier usually makes one delivery each week day, but in densely populated communities he makes two deliveries per day, and if the roads are good he may travel by automobile. He leaves the usual mail for each family in a separate box placed at its own expense at the most convenient point along the post-road, but special delivery and registered letters he must deliver at the residences of the persons to whom addressed or to them in person. He may also deliver mail to persons to whom it is addressed if he meets them along the route and they are known to him, but in a city mail is not deliverable except at residences or places of business.

Wherever rural delivery routes are established "star route" post offices, that is, post offices in towns or villages not reached by railroads, are usually abolished, as no longer needed.

101. Registered Letters.—In order that a patron may receive extra protection in the transportation of valuable

mailable matter, he may, at an extra cost of ten cents, have his letter or package registered, and then the postal officials are required to keep and dispatch it in the most secure manner, and to trace it all along its route, and to deliver it only to the person to whom it is addressed or as he may in writing direct, and may take the written receipt of the person to whom it is delivered, and return this to the sender. If the article is lost in transit, the sender may be reimbursed, not to exceed its value, up to fifty dollars. All mailable matter sent from any post office to any part of the United States may be registered, and that sent to most foreign countries may be also.

102. Money Orders.—Each principal post office is authorized to issue and to pay money orders for sums not exceeding one hundred dollars each. This affords a convenient way of sending small amounts of money to any part of this country or to foreign countries. A person wishing to send money in this way takes it to the postmaster of a money-order office and for a few cents obtains a printed-and-written order for the amount he wishes to send, and then forwards it to the person named therein as payee, and that person can collect the amount at the office on which the order is drawn, and in some cases at any office at which he chooses to present it.

103. The Postal Union.—In 1875, the United States, every nation in Europe, and Egypt agreed upon and put into operation a uniform plan for the transfer and delivery of mail sent by an inhabitant of any one of those countries to a person in any other of them. The rate for letters to any part of Great Britain or Germany, Canada, Mexico or Panama, is two cents per ounce, and for all other foreign countries is now five cents per ounce, and a letter with that amount of United States postage on it addressed to a person in any of those countries and posted at your post office will, in times of peace, be sent on to its destination just as it would be were

it addressed to a citizen of another State of this Union. The rate for printed matter is one cent for two ounces. This international postal system is known as the "Postal Union," and now embraces every civilized nation. But in all international mail care must be taken to exclude dutiable articles. The payment of tariff duties cannot be avoided by sending the articles by mail, for if letters or packages are found on examination to contain articles on which our laws have laid an impost, that duty must be paid before the articles will be delivered.

103a. The Parcels Post.—Until recently the Post Office was used almost exclusively for transmitting things written or printed, such as letters, newspapers, magazines and books. If other things, such as small articles of merchandise, were carried, they had to bear the same amount of stamps as a letter or printed matter of like weight required; and that was too expensive, and the result was that very few of such articles were transmitted as mail. But in August, 1912, the Congress made provision for the transportation of all other articles, including products of factory or farm, except things harmful or quickly perishable. Articles weighing as much as fifty pounds may be sent as parcels-post to any point within one hundred and fifty miles of the post office from which sent, and articles weighing not to exceed twenty pounds to a more distant point, provided they do not exceed seventy-two inches in length and girth. For instance, if an article is 36 inches long, 10 inches wide and 8 inches thick, it would have a combined length and girth of 72 inches. The parcels-post system affords a method of transporting articles that is at once cheap, quick and safe, especially if they weigh only one or two pounds and are to be sent more than one thousand miles or to a point within the first zone of fifty miles; and yet the department has so far proved self-supporting. As the people become better acquainted with the rates and the uses to which it can be put, it will prove of constantly increasing benefit to persons of small means, placing many desirable

things within their reach and decreasing the cost to them of many of life's necessities; and in that respect it is one of the Government's most beneficent undertakings, for a government is rendering its finest service when it adds to the home comforts and lessens the burdens of the people who toil.

103b. The Postal Savings System is in reality a limited banking system connected with the Post Office. Any person over ten years of age may deposit a small amount of money at almost any large post office, and if he permits it to remain there one year or longer, he receives two per cent interest on it. He can withdraw it at any time, and "the faith of the United States is solemnly pledged" that he shall have it whenever he demands it; but if he withdraws it before the expiration of one year after it was deposited, he receives no interest. The money is in turn deposited by the office receiving it in strong banks in the community or close by, and they pay the Government two and one-half per cent interest for the time they keep it, and it may be withdrawn from them by the Government at any time. The system was first inaugurated in 1911, and has proven an actual success. Nearly all depositors are foreign-born wage-earners, who are not acquainted with the banks in the communities in which they labor, and for that reason would keep their savings concealed about their premises or carry them upon their persons were it not for this system; but they do have confidence in the Government, and this system was provided in order that they, and other persons who have money which they do not wish to invest, might have a safe place of their own preference in which to deposit their money, and in order that it might after being deposited be turned into the channels of active business and do the work for which money was designed. The amount of such deposits had grown to more than seventy-five million dollars within six years after the system was installed, and the number of depositors was more than six hundred thousand, most of them residing in the very large cities or in mining

communities, and the Government had never lost one dollar deposited by it in any bank.

104. Growth of the Post Office.—The Post Office existed in this country from the earliest settlement, but its development during the Colonial days was slow. Slowly it was extended between the colonies along the Atlantic coast, but not till 1672 was there "a post to go monthly from New York to Boston." As late as 1760 Benjamin Franklin startled the people by proposing "to run a stage wagon to carry the mail from Philadelphia to Boston, once a week." One of the earliest acts of the Continental Congress was the appointment of Franklin "to organize a post office and post routes from Falmouth, Maine, to Savannah, Georgia, for conveying intelligence and letters throughout this continent," and to spread knowledge of the progress of the Revolution among the different colonies, and we are told by the great historian, Bancroft, that "he thus came to be known as the first postmaster-general." Prior to that time newspapers were mostly printed by the postmasters of the several cities, and their papers had not only been sent free, but all others were excluded from the mails. Franklin was the first to give equal privileges to all publishers. But because of the hard days that followed the Revolution, the postal system was so slowly developed that no Postmaster-General was provided under the new Constitution until 1792, and in 1790 there were only 75 post offices in the whole United States, and the entire cost of the system that year was only \$37,935. Now there are about fifty-six thousand post offices, and the whole number of postmasters, clerks and carriers is more than three hundred thousand; the whole number of letters and postal cards carried each year is about ten billions, besides almost an equal number of pieces of other mailable matter, and the annual cost of the department is about three hundred million dollars; and yet this immense cost is almost met by the sale of stamps and by other postal receipts. The transportation

of mails by railroads has largely supplanted the mail hack and the slow processes of former times. The Government now requires the mails to be carried on the fastest trains, and a letter can be sent from Maine to California in less time and at less cost than one could have been sent from the eastern to the western border of your State seventy years ago.

Questions on Chapter XI.

1. What powers has Congress over postal matters? (95)
2. What effect has the exercise of this power had? How? (95)
3. Could the Government build post roads of its own? (96)
4. Why has it not done so? The first reason? The second? (96)
5. What has Congress done instead? (96)
6. Give some of the details of postal contracts and the postal system? (96)
7. Discuss aid by Congress of road building? (96)
8. How many classes of mailable matter? What does the first include and what are the rates? The second? The third? The fourth? (97)
9. How uniform are these rates? (97)
10. Read what is said about classes of postmasters. (98)
11. How far has Civil Service regulations been extended to fourth class postmasters? And to presidential postoffices? (98)
12. What is said about free delivery? (99)
13. Discuss special delivery. (99)
14. Discuss rural free delivery. (100)
15. What is the benefit of registering letters? (101)
16. What is said about postal money orders? (102)
17. About the Postal Union? (103)
18. Discuss the parcels-post. (103a)
19. Discuss the Postal Savings System. (103b)
20. Describe the growth of the Post Office. (104)

CHAPTER XII.

WAR, INSURRECTION, ARMIES, NAVY AND MILITIA.

105. War.—Congress is also vested with the extraordinary power "to declare war."

War has been among the worst scourges of mankind. It should ever be viewed with horror. "In its best estate, it never fails to impose upon the people the most burdensome taxes and bitter personal sufferings. It always involves the prosperity, and frequently the very existence, of the nation. In a republic, which is necessarily founded on peace, it sometimes proves fatal to public liberty itself, by arousing among the people a fondness for military glory which induces them to readily follow wherever a successful commander will lead." It lays hold of the strongest young men, and sends them forth to ruthless slaughter. It imposes the severest burdens and hardships upon parents at home, and fills the land with orphans, cripples and sorrowing widows. It arouses hate, hardens the heart, and leads soldiers on to commit and citizens to approve the most brutal atrocities. It demoralizes business, cripples peaceable pursuits, closes schools, and puts a stop to humane efforts to relieve the unfortunate and better the conditions of the toiler. It is the opportunity of the demagogue, the exploiter, the robber, the hypocrite and the despoiler of homes. It substitutes anger for reason, insolence for good manners, hate for friendliness, conquest for peaceable endeavor, brutal force for honest commerce, and heathenism for civilization. It lays a restraining hand on freedom of the press and freedom of speech, and often on freedom of religion, and in other ways turns the government into a tyrant. It can never be justified except as the only means of putting an end to unbearable wrongs.

Horrible as it is, the framers of our Constitution realized

that occasions might arise when the Government, for its own preservation or as the only means of upholding the nation's honor, might be compelled to resort to it. Our people have come more and more to love peace and peaceable industry. They desire to be friendly with all the peoples of the earth. As the great George Washington said in his Farewell Address to them, they desire "to observe good faith and justice towards all nations" and to "maintain a magnanimous example of a people always guided by an exalted justice and benevolence." They do not want to conquer other nations or to take their territory by force. They think that by education, by peaceable industry, by honest commerce, is the best way to establish prosperity at home and to render the largest service to other peoples. But as we grow prosperous, other nations grow envious and desirous of more territory and a larger commerce and a larger influence in the world's affairs, and their heathenish kings and military autocrats, with characteristic royal ignorance, seize upon a war of conquest as the only means of obtaining an outlet for the energies of their people and an opportunity to grow rich. It sometimes comes about that the more peaceable and less inclined to war a nation is the more it is scoffed and scorned and insulted by other peoples. They mistake patience for cowardice, and peaceable pursuits for avarice; they despoil our citizens of their commerce, interfere with their free right to the high seas, seize their property, and even recklessly take the lives of those who do not submit to their aggressions; and when protest is made by our Government, they answer with insolence and increase their offenses. These things bring about conditions that are unbearable, and if persisted in lead to war.

The Constitution, which is based on the principle that all authority in a republic is derived from the people, vested the power to declare war, not in the President or the Army or the Navy, or in all combined, but in the immediate representatives of the people, who in the end must bear its burdens.

Congress alone can declare war, but once declared, Congress has no more to do with it than to furnish men and means to carry it on. The actual work of carrying it on then becomes the duty of the executive department of the Government. The raising and equipment of troops, the buying or making of guns and munitions, the appointing of generals and officers, the planning of campaigns and the fighting of battles, are to be done by the President and those to whom he shall assign these duties.

106. Armies.—Congress has power “to raise and support armies,” provide for their organization and appropriate money to maintain them. The President is the commander-in-chief of the Army, in war or peace, and its organization, equipment, movements and control are conducted through the Department of War, the chief officer of which is the Secretary of War.

All able-bodied male citizens between the ages of eighteen and forty-five years “constitute the national forces” and, with the exception of a few specifically exempt because of their occupations or religious beliefs, are “liable to perform military duty in the service of the United States.” Male citizens of that age are said to be of military age. They may never be called upon to perform military duty, but they are liable to be when Congress has need of them.

In 1916 after all the great nations of Europe had been in a great war for nearly two years and our own peace was being constantly imperiled, Congress made provision for large increases in the size and strength of all the defensive forces of the nation. The army now consists of the Regular Army, the Volunteer Army, the Officers' Reserve Corps, the Enlisted Reserve Corps, the National Guard while in the service of the United States, and such other land forces as may be authorized by Congress.

107. The Regular Army.—“The Regular Army is a permanent military establishment, maintained in both peace and war.” It has been maintained in some size almost from

the foundation of the Government. At first it was used to put down Indian uprisings, which frequently occurred suddenly. Then as the country grew more thickly populated and turbulent persons multiplied, it was considered necessary to have a well drilled, organized and equipped force ready and able to quickly quell disorders and preserve peace. Now it is used almost entirely in the Philippine Islands, Hawaii, Alaska, Porto Rico, the Panama Canal zone, and along the Mexican border and other places where order is not firmly established, to quickly put down sudden uprisings, and more especially to ward off invasions of our own lapd.

Between the Mexican and Civil wars the army consisted of between 4,000 and 6,000 privates and officers. As the troubles of the Civil War quieted, its size was fixed at 30,000 men, but soon afterwards was reduced to 25,000, and remained about that size until the outbreak of the war with Spain in 1898. At the close of that war, the Philippine Islands and Porto Rico were added as "island possessions" of the United States, and on February 2, 1901, Congress declared that "the total enlisted force shall not at any time exceed one hundred thousand men;" and under its provisions the Regular Army for the next fifteen years varied from about sixty-two thousand to eighty thousand men and officers, of whom five thousand or more were in the Philippine Islands. In 1916 Congress declared that the total enlisted force of the Regular Army in line of duty should not at any one time, except in the event of actual or threatened war or similar emergency, exceed one hundred and seventy-five thousand men; and provided that in order to bring it up to that number one-fifth of the total increase should be added each year for five years.

Soldiers are divided into three kinds, cavalry, artillery and infantry. Cavalry are mounted on horses, artillery use field guns and howitzers (cannon), and infantry are foot soldiers who fight with rifles and machine guns; and in the Regular Army there are 64 regiments of infantry, 25 of cavalry, and 21 of field artillery, besides the Coast Artillery Corps.

For systematic management the mobile army is organized into divisions, brigades, regiments, battalions and companies. The unit of organization is a regiment, which is commanded by a colonel.

Each regiment of infantry consists of one colonel, one lieutenant colonel, three majors, fifteen captains, sixteen first lieutenants, fifteen second lieutenants, one chaplain, and one headquarters company, one machine gun company, one supply company and twelve infantry companies organized into three battalions.

Each battalion consists of one major, one first lieutenant (mounted) and four companies.

Each infantry company in the battalion consists of one captain, one first lieutenant, one second lieutenant, one first sergeant, one mess sergeant, one supply sergeant, six sergeants, eleven corporals, two cooks, two buglers, one mechanic, nineteen privates (first class), and fifty-six privates—or 103 officers and men. A headquarters company consists of 59 men; a machine gun company, of 67; and a supply company, of thirteen officers, and one wagoner for each wagon in the field train.

A regiment of infantry, therefore, is composed of not less than 1383 officers and privates; and the President in his discretion may increase its size to about 2000 officers and privates.

A regiment of cavalry has the same number of companies (including a machine gun troop) and about the same officers as a regiment of infantry, though a less number of privates. Its twelve field companies or troops are organized into three squadrons of four troops each, each squadron being commanded by a major.

The artillery is divided into two branches, Field Artillery and the Coast Artillery Corps.

The Field Artillery consists of 126 batteries organized into twenty-one regiments. A regiment has about the same officers as a regiment of infantry, but it is not divided into battalions,

nor does it have companies, but instead of companies it has batteries, each of which has about the same officers as a company of infantry, but eighteen more privates. The Coast Artillery Corps consists of over thirty-two thousand men. They are not organized into regiments or companies, but stationed at forts along the coast, in such numbers as may be needed at each, for the purpose of protecting an exposed city or warding off the landing of enemy troops at strategic points. They are supplied with guns of every calibre—some of them capable of firing shells fifteen inches in diameter a distance of fifteen miles or more.

Infantry, cavalry and field artillery are organized into brigades of three regiments each, and the brigades are organized into divisions. An infantry division consists of three brigades of infantry, one of field artillery, and one regiment of cavalry, a regiment of engineers, an aero (or aviation or air-ship) squadron, an ammunition train, a supply train and a sanitary (or hospital) train. Two or more divisions may be united, and then are known as a corps.

The commander of a division is a major general; of a brigade, a brigadier general; of a regiment, a colonel; of a battalion, a major; and of a company, a captain. When an officer dies or is retired, the vacancy is filled by the promotion of an officer from the next rank below his. For instance, if a major were to die or retire or be promoted, a captain would be promoted to the rank of major, and a first lieutenant would be promoted to take the place vacated by the captain's promotion.

The higher officers are educated at the United States Military Academy at West Point, New York, and after completing a four-year course of training and study are graduated with the rank of second-lieutenant. Before graduation they are known as cadets, and are selected in about equal numbers from each Congressional district, and a small number from each State at large. While at the Academy they are paid

\$600 a year, with which to buy clothing and pay their other necessary expenses.

Privates and inferior officers are recruited by voluntary enlistments throughout the land. Every second, third and fourth class postoffice is a recruiting office. All enlistments are for a term of seven years, of which the first three are in the active service, and the other four in the Regular Army Reserve. During the three years of active service the enlisted men are given opportunity to receive instruction in industrial, commercial and general business occupations, so that upon the termination of their enlistments they may return to civil life better equipped for its pursuits.

Privates receive fifteen dollars a month while in active service, and in addition clothes, rations, guns and other things necessary for their support. Other enlisted men (or inferior officers) receive, in addition to these things, from twenty-one dollars a month for a corporal to forty-five dollars for a first sergeant.

108. The Regular Army Reserve.—The suddenness with which almost the whole of Europe was convulsed with war in 1914 created in this country a demand for reserve soldiers, who, already trained, could be quickly mobilized, in case of emergency, to resist an invasion by any foreign nation. Out of this demand grew the act of Congress creating the Regular Army Reserve. It was designed to train and equip a large force of private citizens who would be prepared for actual service in the event of war. It consists (1) of enlisted men who have served three of their seven years' enlistment, and (2) of all other able-bodied soldiers under forty-five years of age who have fulfilled the full time of their enlistments in the Regular Army and been discharged.

It also consists (3) of the Enlisted Reserve Corps, composed of such a number of men as the President may designate, who enlist for a period of four years, and for periods of fifteen days in each year receive from officers of the Regular

Army and other officers, military instruction and training at training camps, during which time they receive the pay of soldiers of like grade in the army, and their traveling expenses. They also receive twenty-four dollars a year during the four years they continue to be reserves, and if called for service in actual war they receive, in addition to the pay of regular soldiers of their rank, three dollars a month for all the time they were in reserve duty.

It also consists (4) of the Officers' Reserve Corps, composed of officers of all grades up to that of major, appointed for periods of five years for the purpose of securing a reserve of officers available for service whenever needed. For fifteen days each year they are ordered to duty with troops or at field exercises, or for instruction in army regulations, and during that time receive the pay of officers of corresponding rank in the Regular Army. For their education officers of the Regular Army are detailed to universities, colleges and other schools which have made instruction in military science a part of their course of study. Those students who have completed an approved course of collegiate study, and the prescribed military training, which must be equal to five hours per week for at least two years, and have agreed to take one or more periods of six weeks each in camp training, are eligible for appointment to the Officers' Reserve Corps, with the rank of second-lieutenant; but the total number of reserve officers so appointed cannot exceed fifty thousand.

All reserve officers and enlisted men are liable to be summoned for actual service in times of threatened or actual war, and when so mobilized they become a part of the Regular Army.

109. The National Guard.—Congress has power “to provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority

of training the militia according to the discipline prescribed by Congress."

In each State there is a military organization called "the militia" or "National Guard." Its officers are appointed by the Governor, and it is organized and trained according to rules prescribed by Congress. It is composed of young men who voluntarily join for the purpose of receiving military training, and of being prepared to defend the State or nation whenever needed. A company may be organized in any part of the State where a sufficient number of men of military age to form a company voluntarily enlist. The Government supplies them with uniforms, guns, camp equipage and other military supplies. They assemble for drill and instruction by their own officers for periods of not less than one and one-half hours forty-eight times a year for three years, and in addition are annually trained in camps for not less than fifteen days, by officers of the National Guard and officers of the Regular Army. For the three years engaged in the assembly drill they receive one-fourth the pay of soldiers of like grade in the army, and officers receive from \$200 a year for a second-lieutenant to \$500 for a captain—all paid by the Government.

The National Guard has been extensively nationalized in recent years. Each State still has the right to use its own Guard in times of peace, but Congress now requires each member of it to take an oath to obey the orders of the President as well as of the Governor, and to enlist for a period of three years in service and three years in reserve; officers may be removed for lack of moral character, capacity or general fitness, and cannot be appointed unless they meet such tests of qualification as the President may prescribe, and the number of enlisted men must not be less than 200 for each Senator and Representative to which a State is entitled, and must be increased until it reaches 800, so that the entire National Guard at full strength will be about 425,000 men, and Missouri's full quota is 14,400.

The National Guard is for the most part infantry, but there is provision also for cavalry, artillery and a naval militia. The whole, or any part of it, may be called into the national service in time of threatened or actual war, and when that is done it becomes a part of the Regular Army and subject to orders from its commanders.

But in ordinary times it is a separate organization in each State, maintained for the purpose of suppressing uprisings, which are too violent and wide-spread to be put down by the ordinary peace officers of a county or city. It can be increased to a larger size than the laws of Congress prescribe; in fact, in case of an insurrection or a powerful uprising of disorderly persons, the Governor could compel every able-bodied male citizen between the ages of eighteen and forty-five years, except judges, civil officers and persons whose religion forbids them to bear arms, to enroll in the National Guard and do his part in restoring order and preserving the authority of the State government. Not only that, but another clause of the Constitution (Art. 4, sec. 4) provides that the United States shall protect each State "against invasion, and, on the application of the Legislature or of the Executive (when the Legislature cannot be convened), against domestic violence;" and hence, if the National Guard is not strong enough to suppress violence within the State, the Governor or Legislature could apply to the President for help, and he would send the Regular Army to restore order. So we see from these clauses how highly the framers of the Constitution valued public order and the preservation of authority and government, for under them the Governor could call to his aid, not only all the powers of the State, but the whole armed authority of the United States, if it were needed to suppress domestic violence.

110. The Volunteer Army.—When a war is declared by Congress, it authorizes the President to organize a Voluntary Army of a designated number of men and to equip them for

army service. The President then calls on each State to furnish its share, apportioned according to population. If the voluntary enlistments do not provide the State's share, Congress may direct a conscription, called during the Civil War a "draft." Then all men of military age are enrolled for army duty, and certain ones of them are chosen by lot and compelled to become soldiers or hire substitutes.

The five wars this country has had were largely fought by volunteers from farms and shops, and their conduct has proved that volunteers can be quickly trained, and when trained become the best soldiers, because the most intelligent and patriotic. When the great Civil War ended there were a million of such soldiers in arms, and the fact that they then peaceably submitted to disbandment and quietly returned to their homes and took up again the pursuits of civil life is proof that this is not a warlike country and an earnest that our Government will continue to be a republic.

111. The Navy.—The Congress is given the power to "provide and maintain a navy."

The Navy is supposed to be necessary to protect commerce, deter other nations from attacking our coast cities and from seizing our trading ships, and to quickly protect any citizen who may be lawfully journeying to or sojourning in another land. It is argued that a strong navy gives confidence to foreign trade, enforces respect for our country and its authority, and actually prevents war, by deterring warships of other nations from committing acts of aggression against our ships or any of our citizens; and in that belief Congress is constantly enlarging and improving the Navy. In times of war, a navy fights the enemy at sea, and may shell the coast cities of the enemy nation and maintain a blockade, by which ships of any kind and of any nation are prevented from entering or leaving any such enemy city.

The Navy consists of battleships, armoured cruisers, steel-protected cruisers, double-turret monitors, steel gun-

boats, torpedo destroyers, submarine torpedo boats, and numerous other war vessels—more than 250 in all.

The battleships are the largest warships. The newest ones cost twelve million dollars each, weight twenty-seven thousand tons or more, carry ten fourteen-inch or eight fifteen-inch guns, twelve or more eight-inch or six-inch guns, four under-water torpedo tubes, and many other smaller or rapid-fire guns, and are manned by eight hundred to twelve hundred men. They are usually named for the States, thus, "The Pennsylvania," "The Arizona."

The armored cruisers are little less powerful, though their armament consists of smaller guns. They are protected by belts of steel, five or six inches thick, extending five feet below water line and to the upper deck. They are named for the large cities, thus, "The St. Louis," "The Philadelphia." These vessels travel all over the world, and visit any waters where the President may think American citizens or interests may be helped or protected by their presence.

The number of men by which the Navy is manned varies with the warlike conditions of the world, but in 1916 it consisted of about 4,000 officers, 54,000 enlisted men and 1135 midshipmen. But in that year Congress made provision for its gradual increase in both men and vessels.

The Navy has a reserve, just as does the Army. By the same act Congress made provision for a large **Naval Reserve Force**. It consists of citizens who obligate themselves to serve the navy in time of war or during the existence of a national emergency, and who enroll for the purpose of being trained and prepared to do efficient service whenever the President declares such an emergency exists. They enroll for terms of four years, and are given a rank or grade in accordance with their qualifications as determined by an examination, and are thereupon assigned to active duty in the Navy for such periods of instruction and training as may be necessary to qualify them for service in that rank or grade; and having taken that instruction, they go back into private

life, but subject at any time, upon the summons of the President, to return for service. The minimum training required of enlisted men to qualify for active service is three months. During the time of their training they receive twelve dollars a month, their clothing and all needed supplies. Other reserves are enlisted men who have served four full years in the Navy and been honorably discharged; honorably discharged naval officers; and men who have been trained to sea-going service and have connected themselves with merchant ships of the type known as "naval auxiliaries," which mean ships engaged in carrying supplies for war vessels and navy yards.

112. Navy Organization and Officers.—The commander-in-chief of the Navy is the President, but its affairs are conducted through the Navy Department, over which the President appoints a member of his Cabinet, the Secretary of the Navy, who superintends the work done by the Navy, the movement and construction of ships, the enlistment of recruits, the appointment of officers, and the purchase or manufacture of guns, shells and supplies. The chief active officer of the line is the rear-admiral. The classification of vessels and the assignment of officers are made according to rules formulated by the President, but in a general way it may be said that a rear-admiral commands a squadron, that is, a detachment of vessels employed on a particular sea or ocean; that vessels of the first class are commanded by captains, of the second class by commanders, of the third class by lieutenant commanders, and that the class of a ship depends on the number of guns it carries.

The active officers of the navy are educated at the Government's expense at the Naval Academy at Annapolis, from students called midshipmen, of whom a few are appointed each year from the whole country at large, and one for each Senator and Representative appointed on their recommendations every two years.

113. Marine Corps.—Attached to the Navy, though not a part of it, is the Marine Corps, consisting of about 6,000 marines and over 200 officers. Marines are sea soldiers; that is, soldiers trained to fight with army rifles and machine guns, and sent along with war vessels to aid them on land in case of an attack upon a city or fort, and also to do duty in forts or garrisons on our own sea coast.

114. Captures.—Congress makes rules determining what is to be done with property or men captured in time of war on land or sea. Among most nations a captured war vessel belongs to the nation capturing it. An enemy trading or passenger ship, if captured, is destroyed, if it cannot be convoyed into port; if it can be so convoyed, it and all property on board belong to the officers and sailors making the capture. That is one kind of piracy that is still tolerated by civilized nations.

When a war between two or more nations is declared every other nation has the right to require the merchant ships and war vessels of each of them then lying in its ports, to go to sea within a few days or be interned during the war. This demand the neutral nations must make and enforce, else to permit the ships of the nations at war to remain in their ports, or within the three-mile zone along the coast, would be considered the harboring of enemy vessels and an unfriendly act. For these reasons, in order to avoid capture at sea, the merchant ships of a nation which does not have a navy able to protect them, when a war with a nation having a strong navy able to command the sea comes on, intern during the war in the nearest friendly port; that is, they tie up and remain in port until the war is over. Thereby great injury is done to that nation's commerce, and in these facts is to be found one of the strongest arguments for constructing a navy in time of peace—in order to be prepared to protect and maintain in active commerce trading ships when war is declared.

Enemy property captured on land does not belong to the men capturing it. They cannot honestly appropriate it to

their own use. If it consists of guns or munitions or horses that can be used in prosecuting the war, they are added to the army stores; if it consists of things that cannot be so used, or of things that cannot be carried away, they are destroyed or sold or abandoned. It is considered dishonorable for soldiers to appropriate private property to their own use without paying for it, or to needlessly burn houses or barns or cities, though they belong to adherents of the enemy.

Soldiers and sailors captured in war, though called "prisoners," are not considered criminals and are not punished as for crimes, but are held in camps or at forts as prisoners of war until peace is declared, or are exchanged for men of like rank captured by the enemy. It is considered brutal to put to death or ill treat prisoners of war captured in battle. But these considerations are not extended to captured spies, or to traitors who have deserted and joined the enemy; among all nations it is deemed proper to put them to death, or subject them to severe punishment.

115. How Supported.—The Army and Navy are supported by money raised by taxation. The cost is now several hundred million dollars annually. The entire cost of the great Civil War was nearly eight billions.

But lest a reckless Congress should undertake to commit the next Congress to a war and thus make impotent the voice of the people against it, or lest the army should get beyond the control of the Government, Congress is forbidden to appropriate money to carry on a war or to support an army for a longer time than two years. Of course at the end of that time the incoming Congress can make other appropriations for maintaining the army if it considers it necessary that the war should go on. The framers of the Constitution felt that a great army is always to be dreaded in a republic, and hence this provision is made, so that the soldiers may be disbanded and sent to their homes when the war is over, and so that the war may be ended whenever the people

at the elections demand that it be no longer carried on, and so that the size of the army may be reduced in times of peace if that seems wise.

116. Rules and Regulations.—But not only does Congress have control over the moneys that go to support the army, but it is given power “to make rules for the government and regulation of the army and navy.” The Army cannot become greater than its creator. Neither can the Navy. Each must itself be subject to the authority of Congress, and that means in the end it must be obedient to the will of the people. Congress not only determines how large the Army and Navy shall be, under what rules they shall be organized and do their work, but how offenses of soldiers and sailors and officers shall be punished, and by whom, or it can authorize the President to make the rules and regulations by which they are to be governed, and that is the course usually pursued, and if those regulations do not suit the people their remedy is to elect a Congress that will make different regulations. Thus we see that “the military authority must always be subject to the civil authority,” and that means that armies are as much under the authority of law as is a private citizen.

117. Insurrection.—The Congress has power “to provide for calling forth the militia to execute the laws of the Union, suppress insurrection, and repel invasions.” This clause of the Constitution is no less important than the one which gives Congress power to declare war. Under it the “Whiskey Insurrection” was put down while Washington was President, and President Lincoln invoked it as the Union’s authority for putting down the secession movement at the time of the Civil War.

If the people were to resist a decision of the United States courts or the officers of the Union engaged in enforcing its laws, the President, aided by Congress, under this clause could call forth as much of the militia as he deemed necessary,

if the usual officers and the Regular Army were not able to enforce order. Thus, while Washington was President, the people of western Pennsylvania resisted the officers who were appointed to collect the excise tax on distilled spirits, and drove the collectors out of their counties. When they were indicted by the Federal court, they resisted the marshal who came to arrest them, and when he came with deputies, they arose to the number of two thousand and forced them to flee for their lives, and armed and arranged themselves into companies. Thereupon, under this authority given the Congress "to provide for calling forth the militia to execute the laws of the Union," the President called 15,000 men into the field from four near-by States, put them under the command of Governor Lee of Virginia, and suppressed this uprising in short order. This clause, then, gives the Congress and the President authority to put down uprisings against the laws of the Union and to enforce the judgments of its courts.

118. Separate Authority of State and Nation.—It is necessary to remember that whether the State or the Union first acts in enforcing the law or suppressing public disorder, depends on whether it is the authority of the State or the authority of the Union that is resisted. If the people should resist a law of Congress or defy the authority of a Federal court, the President must act; but if they resist the laws of the Legislature or the authority of a State court, the Governor or some other State officer must act. In the Whiskey Insurrection we saw that the people resisted the collection of the United States revenue, and when they were indicted for that in a Federal court they resisted the authority of the marshal of that court who tried to arrest them. The marshal then called to his aid some deputies, but they too were overcome. It was not the duty of the Governor of Pennsylvania to step in and aid the marshal in enforcing the decrees of that court, for the uprising was not against the State government, but "the laws of the Union." Therefore, when the marshal

found "combinations too powerful to be suppressed by the ordinary course of judicial proceedings," he called upon the President, who, being without an army, called forth "the militia to execute the laws." In our time, the President, instead of calling forth the militia, would first use so much of the Regular Army as he could readily send to the place of the disturbance, and if that proved insufficient, he would call forth the Regular Army Reserve or the National Guard of the States, or both, and if they too were insufficient then Congress would authorize him to raise a volunteer army.

But if the uprising were wholly against the authority of a State court or were in resistance of the authority of a State officer, it would first be the duty of the sheriff to undertake to restore order and arrest the culprits, and if he and his ordinary deputies were not strong enough to do that, then his duty would be to resort to the *posse comitatus*, that is, to summon the men of his county to aid him, and if they proved insufficient he could call on the Governor, who could send the whole National Guard of the State to his aid, and if that proved insufficient the Governor could enroll all the men in the State liable to military duty, or before he did that, or afterwards, the Legislature or (if it could not be convened) the Governor could call on the President for help, and the President would then send him so much of the Regular Army as might be needed, and if that proved not enough then he could send the National Guard from other States.

But sometimes the uprising may be against both State and National authority. Thus a destructive riot along a railroad might be such. In tearing up the tracks and burning cars, the rioters would resist State authority; in stopping cars which carry mail, they would be resisting National authority. And in such case, the Governor or President or both may suppress them.

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CHAPTER XIII.

POWERS DENIED TO THE UNITED STATES.

119. Affirmative and Negative Powers.—So far the discussion has been directed towards the powers granted to Congress. The Constitution expressly says that Congress may do certain things; but for fear the Congress or the Government, or some of its officers, might attempt to do other things not mentioned, the Constitution went further and specifically mentioned some things that Congress should not do. Some of these are mentioned in Section IX of Article I of the Constitution under the heading, "Powers Denied to the United States." But they are not all mentioned in that section. Some of them are found in the first ten Amendments, proposed at the first session of the First Congress, and ratified by a three-fourths majority of the States as early as December 15, 1791; in fact, one or two States ratified those amendments at the same time they ratified the Constitution as first framed. So it is not only important to know what Congress may do; it is also important to know what it may not do.

119a. Importation of Slaves.—The Constitution (Art. 1, sec. 9, cl. 1) said that Congress should not prior to 1808 prohibit "the migration or importations of such persons as any of the States now existing shall think proper to admit." This meant that Congress could not prohibit the importation of slaves into the United States prior to 1808. It was the first public act by any nation in the world against the then prevalent sin of capturing negroes in Africa, bringing them to the New World and selling them into slavery; and while it did not and was not intended to put an immediate stop to that traffic, yet when the year 1808 had arrived Congress lost no time in prohibiting, by severe penalties, the importation of "such persons" into this country. For some reason

the words slave or negro or "persons of African descent" are not used in this clause, but it has always been admitted that it refers to the African slave-trade. Since slavery has long since been abolished the clause is now only of historical interest, first, as indicating how slavery was then regarded, not only by the framers of the Constitution, but by the States which adopted it, and, secondly, as containing one of the powers denied to Congress.

120. Habeas Corpus.—The Constitution (Art. 1, sec. 9, cl. 2) says that "the privilege of the writ of *habeas corpus* shall not be suspended unless when in cases of rebellion or invasion the public safety may require it."

The words *habeas corpus* are Latin words, which mean, "Have you the body," and the writ of *habeas corpus* is a summons directed to a sheriff, marshal or other officer commanding him to have the body of the accused person before the court forthwith, and to show by what authority he deprives him of his liberty. When the officer makes return to that writ the court puts aside all other business and proceeds at once to determine whether or not the accused is being legally held, and if he is not he is discharged. In former times men were arrested on suspicion, or because the mob raised an uproar against them, or because the officer or king hated them. They were confined in prison on mere oral charges, or without any formal accusation in writing, or without trial or a chance to give bail till trial, or were condemned unheard, and even against the law of the land. Such things could not occur in our country, and the writ of *habeas corpus* was devised for the express purpose of preventing or putting a stop in an orderly way to such cruelties and oppression. In our land the accused person is entitled to be informed of the offense of which he is accused, and when arrested a warrant or complaint, in which is formally stated the crime he is charged with having committed, must be issued by the court, either before or immediately after his arrest,

and if that is not done, not only is the officer holding him and his bondsmen liable to him for damages, but he can go to any higher court, even the highest court in the State, and in some instances even to the Supreme Court of the United States, and immediately by the writ of *habeas corpus* obtain his release. He may have been arbitrarily denied bail contrary to law, or at his trial he may have been denied the right to have witnesses in his own behalf, or denied the right of trial by jury when he was entitled to a jury trial, or the law under which he was convicted may have been in violation of the Constitution; for all these wrongs, and many others, the writ of *habeas corpus* affords him a speedy remedy, and that remedy neither Congress, nor any State, can take away from him, except when in times of rebellion, or invasion by a foreign foe, the public safety may require that the writ be for a time withheld.

The great purpose of the writ of *habeas corpus* is to force courts to give an accused a fair, speedy, public trial by a jury according to the forms of law, and to restrain detectives, policemen, sheriffs and other officers, and soldiers and militia, from arbitrary and cruel arrests of private citizens, and from acting as judges themselves. It was designed to prevent officers clothed with great power from abusing that power and using it to inflict cruel or tyrannical oppression upon others.

121. Bills of Attainder and Ex Post Facto Laws.—The Constitution also says that “no bill of attainder or *ex post facto* law shall be passed.” A bill of attainder is a legislative act that inflicts punishment without judicial trial. A bill brought into Congress or a legislature, condemning to punishment the person named, without a sentence or trial of a court, would be such a bill. Formerly such bills were passed by Parliament in England, and the person thus punished was said to be attainted; that is, his blood was said to be corrupted, he could neither acquire property nor transmit it to his children, and he was denied the protection of the laws. Such a bill would

be contrary to the Constitution. No humane people would uphold it. It is an instrument of oppression and tyranny. It would be absolutely destructive of trial by jury. It would make out of the legislative body an arbitrary and irresponsible despot, punishable by no one, however extravagant its actions. It belongs only to cruel or barbarous nations. This clause in the Constitution is of chief interest to us as indicating how determined our forefathers were to make entirely separate the legislative and judicial powers of government. Their idea was that an accused person could only be convicted by a jury. Trials belong to courts, and all trials ought to be in courts and the guilt or innocence of the accused determined by an impartial jury. A legislative body may investigate the guilt of one of its own members to the extent of determining whether or not he is to remain a member or be expelled, and it may by impeachment remove an executive officer, but it cannot pronounce a private citizen guilty of a crime.

Ex post facto laws are equally unfair. They make an act a crime against which there was no law when the act was committed. They declare certain conduct to be criminal and provide punishment for any person who has been guilty of that conduct at any time in the past. Such laws would be unjust. Certainly no one ought to be punished for doing a thing which was not a crime when he did it.

And the Constitution not only says that Congress must not pass any bill of attainder or *ex post facto* law, but it as plainly says (Art. I, sec. 10, par. 1) that no State shall pass any such bill or law. And if either Congress or the Legislature should do so and an attempt were made to enforce it, the courts, if appealed to, would issue the writ of *habeas corpus* and prevent its enforcement.

122. Export Tax.—In the same section IX it is said that "no tax or duty shall be laid on articles exported from any State." We have seen that Congress may lay a tax on

articles imported into this country. But neither it nor any State can lay an export tax on things shipped abroad. It was supposed that home industries would be much encouraged and more profitable, and foreign trade greatly enlarged, if the Government charged nothing for shipping goods out of this to other countries.

123. Regulations of Commerce and Taxation.—It would be a violation of the Constitution for a sectional party to undertake to build up the business of its section at the expense of another part of the country by means of laws designed to regulate commerce either among the States or with foreign countries, or by tariff laws designed to increase the industrial prosperity of one section at the expense of another. To do that is an ever-present temptation to selfish Congressmen, but the Constitution (Art. I, sec. 9, cl. 6) says that "no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another." A very high tariff laid on products or goods like those produced in one part of the country, and a very low tariff on goods or products like those produced in another section, might very greatly benefit the one and injure the other, since it would tend to give to the one a monopoly in this country of the things it produced, and compel the other to compete with the world in the sale of its products. Such a method of laying tariff taxes would be selfish sectionalism. Congress is also given power to regulate commerce among the States and with foreign countries, but in doing that it must have equal regard for the interests of every State. Anything less than that is bad faith, and the party responsible for it should be defeated at the elections.

Foreign commerce increases the business and riches of that part of the country which engages in it. It can be aided by a supply of sufficient ports and wharfs and collectors, and crippled by a failure to supply them, for ships will always prefer ports at which they can quickly load and unload, and

railroads will center at a port where their freights and passengers can be quickly sent on their way across the sea, and where they may quickly transfer to their cars cargoes for shipment into the interior of the country. So that it is the duty of Congress to supply each port with such accommodations as its trade may reasonably require, and the extent of such accommodations will always depend on the natural needs (or advantages) of the port. The trade that naturally will flow into one port will certainly be larger than that of another port, and the size of the wharf, the docks, the number of collectors, the depth of the water must be commensurate therewith. But all ports must be treated with equal-handed fairness, according to their natural needs. The primary principle of American government is justice, and this clause of the Constitution requires that Congress in regulating commerce among the States and with foreign countries and in laying tariff taxes must be just—just to all the States alike.

124. Free Trade Among the States.—The Constitution guarantees to the inhabitants of one State absolute free trade with those of all other States. By which is meant, that neither Congress nor any State can levy an export or an import tax on goods or persons passing from one State to another. The Constitution says, "Nor shall vessels bound to or from one State be obliged to enter, clear or pay duties in another." New Orleans cannot assess tariff taxes on a cargo of goods shipped to her port from Boston. Iowa cannot collect import duties on cotton shipped to her from Arkansas.

Until the time of the Spanish-American War in 1898 this clause was generally understood to apply to every State and Territory and possession of the United States. But it does not do so in express words, and the Supreme Court held that Congress could limit its application to the States alone, and could require the inhabitants of conquered or purchased islands, such as the Philippines or Porto Rico, to pay tariff duties on all their goods shipped into any State, and make

those tariffs higher or lower than those charged against goods from other countries.

125. Appropriations.—No money can be paid out of the Treasury except "in consequence of appropriations made by law." Neither the President nor the courts nor any executive officer can spend any of the Government's money until Congress consents. Congress can alone declare for what the moneys collected into the Treasury by taxation may be used. This it does by laws called appropriation bills. These bills set out in detail the things for which the money may be spent. Then there are auditors and comptrollers of the Treasury, who examine every item of expenditure and see that no money is paid out except for the purposes for which Congress appropriated it. In order that the people may know how the public revenue is being spent, and in order that Congress may know that it has been spent just as it has directed, "a regular statement and account of the receipts and expenditures of all public money shall be published from time to time." Appropriation bills may be passed at any session.

126. Titles.—No title of nobility can be granted by the United States. Titles of nobility are lord, earl, duke, duchess, baron, princess. In other countries they are conferred by the king or inherited from an ancestor. They are out of harmony with the basic principles of a republic, which is that all citizens have equal rights before the law. A republic cannot prefer some of its citizens over others. To recognize titles by law would be to create ranks among the people. And of course our Government will not permit other nations to confer titles upon its officers which it cannot itself confer.

127. Presents.—No person holding any office of profit or trust under the United States shall, without the consent of Congress, accept any present, office or title, of any kind

whatever, from any other nation or any of its officers. For him to do so might lessen his loyalty to his own country. American officers are chosen to look after the public business which the people through their laws have directed to be done. But nevertheless weak natures occasionally find their way into public office who might be won away from their devotion to their own country if a high-sounding title or a valuable present were given to them by another government. The meaning of this provision is that all persons who hold offices or positions of trust under the Government must give their entire allegiance to that Government. They must have no divided loyalty; they are not to have any secret alliances with any other nation; they must be satisfied with the pay and honors which their own country confers upon them. While holding an office or position of trust, they can accept no title or office or pay or gift of any kind from any foreign king or nation without first obtaining the consent of Congress to do so.

128. Freedom of Religion.—The First Amendment to the Constitution says that "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof."

Prior to the Revolutionary War the citizens of some of the colonies had been taxed to maintain a favored church. That was done, for the most part, by laws enacted by their legislatures, and that tax was imposed on persons who were not members of that church, as well as upon those who were, and even upon those who were members of other churches. This part of the Constitution absolutely prohibits such taxation by Congress. It does not forbid any State from levying taxes for the support of churches, but the constitution of nearly every State contains a provision prohibiting its legislature from levying taxes or using public money for such a purpose.

It should be observed that the prohibition is against the "establishment of religion." That means, a church established by the Government and supported by the Government. It does not prohibit the building and support of churches by private citizens. On the contrary, it specifically says that no law "prohibiting the free exercise" of religion by any person shall ever be passed by Congress. It allows all men to adopt and practice such religion as they may severally choose, and to give their money freely for its propagation. The theory behind this part of the amendment is that the Government cannot impose religion upon men without becoming arbitrary and oppressive, and that the Government will be stronger and more just, and the people happier and religion more prosperous, if they are left free to worship God according to the dictates of their own consciences, in an orderly way and without molestation.

129. Free Speech and a Free Press.—The First Amendment also says that Congress shall make no law "abridging the freedom of speech or of the press." Freedom of speech and freedom of the press mean the right to speak or write whatever is true; they do not mean the unrestricted right to speak or write a falsehood.

A characteristic of all despotisms where tyranny and oppression abound has been to lay a restraining hand on any public speaker who would criticise the king or denounce the cruelties or corruption of public officials; and in some governments at the time the Constitution was framed there were officers called censors of the press through whose hands was required to pass every article an editor desired to publish, and they struck out of it any sentence or any part of it they did not approve. That is what is meant by "abridging the freedom of the press." By the words in this amendment forbidding Congress to make any law "abridging the freedom of speech and of the press" was meant that Congress could make no law requiring an editor to obtain the approval

by a censor of a certain article written by him before he could publish it, nor any law authorizing any officer to restrain any public speaker from saying what his conviction of right and duty may prompt him to say.

Ours has been defined as "a government by public discussion." This is the people's government, and they cannot act intelligently unless they are informed; and that they may be informed it is necessary that unselfish speakers and editors and authors be free to discuss any act of the Government or any question of industry or morals that affects the general welfare. Turning the light of truth upon error is the best way to cure it. Public wrongs can be corrected if speakers and editors are free to tell the truth about them.

But all that does not mean that an editor may write or a citizen may speak a wicked falsehood with the same freedom he can speak the truth. The editor can write and publish what he pleases, and the citizen can say what he pleases; if what he writes or speaks is true, he cannot be punished; but if it is false, the injured party has a remedy. So while he is free to write or speak, yet if he abuses that freedom by writing or speaking things that are vicious and untrue he may be brought to account.

Malicious falsehoods spoken of another are slander; if written or printed of another, they are libel. If the speech of a citizen or the writings of a publisher are so indecent as to be slanderous or libelous, he may be sued for damages, and in extreme cases fined and imprisoned. But unless one's speech or writing disturbs another's peace, or is so indecent and false as to amount to malicious libel, or is obscene, the courts will not punish him for crime, but will permit the party injured by the falsehood to seek redress for the wrong done him by a suit for damages. Moreover, if the book or paper or letter is so indecent as to corrupt public morals, or such a base humbug as to deceive and defraud the public, or so in-

flammable as to excite them to disorders, Congress will deny it the use of the mails.

130. Peaceable Assembly and Petition.—The First Amendment further says that Congress shall make no law abridging “the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” The people do not have to ask permission of their officers to peaceably assemble. They can do so without permission from any one. That is a right they have reserved for themselves, and no one can take it from them. Not only can they assemble; they can also remonstrate in an orderly way against the action of their officers, and they always have the right to petition the Government for redress of grievances. Those rights inhere in the people wherever there is freedom. Of course, the Government (state or national) may disperse a mob or a disorderly crowd, but so long as assemblies are peaceable and orderly and do not interfere with the rights of others no officer has any right to interfere with them.

Freedom of speech, freedom of the press, freedom of assemblage and freedom of religion are some of the tests by which a people’s liberties may be measured; but they are all to be enjoyed within the limits set out in the last three sections. Thomas Jefferson said that “error of opinion may be tolerated where reason is left free to combat it,” and it is in order that reason may freely combat any error that freedom to speak and to write and to worship and to peaceably assemble has been guaranteed to us. The purpose of that freedom is that error may be abandoned, that the abuses of government may be corrected, and not that government may be destroyed, or disorder encouraged, or officers maligned, or private persons slandered, or the public scandalized.

131. Reserved Powers.—The Tenth Amendment is: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.” The Government

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of the United States is one of enumerated powers. These powers are enumerated or expressed in the Constitution. The Government has no other powers. All other governmental powers have been reserved to the people or to the States. The people may sometime, by amendment of the Constitution, greatly enlarge the powers of the President or of Congress, but always and under every circumstance the powers of the Government are limited by the Constitution and amendments thereto. The Government is under the same obligation to refrain from trespassing upon the powers retained by the States that the States are to submit to the authority they have delegated to the Union. Neither has the right to deny the powers of the other. Our dual form of government—by the States and by a Union of States—answers the needs of the people for government and conserves the peace of society far better than either alone could do it.

Questions on Chapter XIII.

1. Discuss the affirmative and negative powers of Congress. (119)
2. What does the Constitution say about the slave trade? (119a)
3. What is further said about that provision? (119a)
4. What does the Constitution say about *habeas corpus*? (120)
5. What do these words mean and what is the writ? (120)
6. In former times how were men arrested and held? (120)
7. Could such things occur in our country? (120)
8. Suppose no warrant or complaint is filed against an arrested person? (120)
9. Name some of the things for which the writ is a remedy? (120)
10. What is the great purpose of the writ? (120)
11. What is a bill of attainder? Why unfair? (121)
12. What is an *ex post facto* law? Why is it unfair? (121)
13. Could such a bill or law be enforced? Why? (121)
14. Can Congress or a State lay an export tax? (122)
15. What about preference in the regulation of commerce or revenue? (123)
16. How can Congress aid and cripple commerce? (123)
17. Will one port naturally require more aid than another? (123)
18. How should Congress act in all things? (123)
19. Is there free trade among the States? (124)

20. What clause of the Constitution guarantees it? (124)
21. Does that clause apply to island possessions? (124)
22. How may money be paid out of the Treasury? (125)
23. Can Congress or the President confer titles of nobility? (126)
24. Can American officers accept them from other nations? (126)
25. Can an officer accept presents from another nation? (127)
26. What is the meaning of this provision? (127)
27. What does the Constitution say about freedom of religion?
(128)
28. What does this provision prohibit and what does it mean? (128)
29. What does this Constitution say about freedom of speech and
of the press? (128)
30. What do freedom of speech and of the press mean? (129)
31. What do they not mean? (129)
32. What does "abridging the freedom of speech and press" mean?
(129)
33. Why does such freedom seem necessary? (129)
34. Is this an unrestricted freedom for either editor or speaker?
(129)
35. What are the penalties for slander and libel? (129)
36. What does the Constitution say about assemblage and petition?
(128)
37. Have the people the right to peaceably assemble and remonstrate
against grievances? (130)
38. What are some of the tests of a people's liberties? (130)
39. How are they to be enjoyed? (130)
40. What is the purpose of those privileges? (130)
41. What is the tenth amendment? (131)
42. What powers has the Government? (131)
43. Under what mutual obligation is the Government and States?
(131)

CHAPTER XIV.

POWERS DENIED TO THE STATES.

132. Powers to Make Treaties.—All powers that must of necessity concern the whole nation are denied to the States.

Thus we have seen in section 50 that treaties may relate to a settlement of the national boundary or the terms upon

which trade may be carried on between citizens of this country and foreign countries. One can readily see how the internal peace and harmony of the country could be disturbed if the Union should insist on a certain line as the boundary and a State had the power to fix upon another line. If in settling the boundary line between the United States and the Spanish possessions in America, the Union had agreed that it should be the Rio Grande and the State of Louisiana had had power to agree that it might be the Sabine and Red rivers, troublesome confusion would have arisen. And suppose that, although Congress under its power to levy imposts had fixed a tariff charge at certain rates, a State had power by treaty to agree with other nations that so much of their goods as came to its ports should enter free, and then under the clause which guarantees absolute free trade between the States it began to ship those goods all over the Union: the result would be that the law passed by Congress would break down, and the Union itself would prove a useless thing. To avoid any such results the Constitution (Art. 1, sec. 10, cl. 1) says that "no State shall enter into any treaty, alliance or confederation." The power to make treaties is vested solely in the President and Senate.

133. General Welfare Provisions.—The Preamble declares that one of the purposes of forming the Union was to "promote the general welfare." In keeping with that purpose the Constitution denies to each State the power to coin money, to emit bills of credit to do duty as money, or to make anything except gold and silver coin a tender in payment of debts. It is easy to see that business transactions are greatly facilitated by uniform money for the whole Union, and this clause makes it impossible for any State, by issuing different coins or moneys of its own devising, to bring confusion into the monetary system provided by Congress.

So, also, it will readily be seen that foreign commerce would be in endless confusion if each State could impose im-

port taxes different from those laid by Congress, and for that reason "no State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws," and we have seen in section 67c that by "its inspection laws" is meant laws and regulations for the public health and safety.

Thus we see that the purposes of these inhibitions on the powers of the States were not to humiliate them, or take from them any power many of them would ever wish to exercise, but to so unify the moneys of the country that "commerce among the States" would be easy, and to make so uniform the impost taxes that one State would not be constantly trying to build up its own trade and wealth at the expense of another.

134. Impairment of Contracts.—"No State shall . . . pass any law impairing the obligation of contracts." These are simple words, yet so perverse is human nature that no other clause in the Constitution has so often been invoked or disregarded. They mean that when one enters into a contract, no State can do the immoral thing of helping him to break it. Contracts underlie the whole framework of modern industry. The prosperity of all persons depends on the faithful keeping of contracts. No State can relieve itself of its own contracts with private citizens, or relieve its citizens of their contracts with each other, or with citizens of other States, nor can the United States do so. A town may issue its bonds to pay for an electric light plant, and those bonds it must pay; it cannot refuse to pay them because after a few years it ceased to use the lights; nor can the Legislature or the town council excuse the town from paying them if they were lawfully issued. Of course, no one is compelled to keep an unlawful contract; and a contract obtained by cheating or taking advantage of another's weakness or lack of knowledge, or by falsehood and false representation not known to be false, is an unlawful contract. This clause of the

Constitution means that no State, no person, not even the United States, can repudiate a lawful contract legally entered into. It means that when you solemnly agree with another person to do a thing which the law permits to be done, the law will compel you, at that other person's request, to keep and perform your agreement. It would seem that every good person would do this, without any law. But many persons are unwilling to pay their debts, or do many other things they have agreed to do, and therefore the law not only says that they must fulfill their contracts, but the Constitution says that no State can pass a law relieving them from that obligation.

135. The State and Nation.—No State is a nation. "No State, without the consent of Congress, shall keep troops or ships of war in times of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war unless actually invaded, or in such imminent danger as will admit of no delay." A government that cannot do these things is not a nation. A State is almost supreme in the control of its internal affairs, and in managing them few things are denied to it by the Constitution; besides, it can do anything which it is not specifically prohibited by the Constitution from doing, and the things it is prohibited from doing nearly all relate to external matters—to its relations with other States or nations.

(1) The State cannot have a navy in times of peace nor maintain a standing army except by consent of Congress. The Union, by the Constitution, was made to shoulder all the external troubles of a State. It was given power to "repel invasions," and to raise armies, maintain a navy and call forth the militia for that purpose, and therefore there is no need for a State to "keep troops or ships of war in times of peace."

(2) Congress is given power "to declare war;" it would be destructive of all national peace and harmony if any

State, without consulting the others, could "engage in war." If a State could do that, one turbulent State could constantly be involving all the others in trouble.

(3) The Union is given power "to make treaties" and "to regulate commerce with foreign nations and among the States," and therefore as to such matters there is no necessity for one State to enter into an "agreement or compact with another State or with a foreign power." Two adjoining States have been known to enter into agreements as to their relative boundaries. Thus, when Kentucky became a State, both she and Virginia claimed a wide strip of country along the Cumberland Mountains and the Big Sandy River, and the matter was settled by each State appointing commissioners to locate the dividing line, and when they agreed thereon the Legislature of each State adopted their agreement, and thus by compact with each other nearly all the disputed lands were agreed to belong to Kentucky. This was in fact an agreement or compact, but it was not such a one as is meant by this clause of the Constitution; it was rather a peaceable attempt to ascertain what portions of the land belonged to each State, and to definitely fix the dividing line, so that the inhabitants there might know to which State they were to look for protection in the enjoyment of their property and civil rights. These words of the Constitution mean that "no State shall enter into an agreement or compact with another State or with a foreign power" to subvert the authority of the Union, or nullify its laws, or to gain advantage for itself because of their weakness. They mean that Pennsylvania cannot agree with Canada to sell her coal in exchange for pine lumber, in defiance of the tariff laws of Congress; they mean that Missouri could not agree with Illinois and the other States of the Mississippi Valley that no naturalized Italians shall ever settle within their borders, or that they will trade with each other alone and with no other States. They mean, in short, that no State can ever enter

into a compact with another to do any of those things which the Constitution clearly says Congress shall have power to do.

All the things that are by this clause denied to the States are the things that always belong to a nation. A nation, whether it be a republic or a monarchy, always has power to make treaties, to regulate foreign commerce, to raise armies, levy import taxes and maintain navies. The Government of the United States can do these things, and therefore it is a nation. The States cannot do them; they are not nations. We see from this how anxious the American people were "to form a more perfect Union," when they voluntarily adopted a Constitution that took from the States all possibility of doing these things, which each might have tried to do for itself had there been no Union. But without a surrender of those things there would have been no Union, and without the Union no State would have attained the majestic peace and firm prosperity it now enjoys. These things were wisely committed to the Union, and denied to the States. The Union can do them better than the States, and therefore the States should not undertake to do them at all. If both the Union and the individual States could do such things there would not only be a clash of authority, but a divided authority. A divided authority is almost the same as no authority. Final authority must be lodged somewhere, and final authority to act upon all subjects that must necessarily concern all the people of the country should be lodged in the Union, and that is what this clause of the Constitution means.

136. Slavery Prohibited.—Slavery at one time or another existed in all the thirteen original colonies. At the time the Constitution was adopted it was being abandoned in a few of them, but its abolition was still a tender subject, even in them, for while their inhabitants did not own or use slaves on their own properties, they were still considerable shippers of them to those States whose inhabitants would

buy and use them. Nothing was said about the abolition of slavery by the Convention that framed the Constitution. It was assumed by its framers that each State had the right to determine for itself whether slavery should be continued within its borders. They did consider that Congress had the right to put a stop to what was called "the African slave trade," by which was meant the capturing of men and women in Africa and bringing them to America and selling them into slavery, for that traffic was foreign commerce, and the Constitution gave Congress complete control over foreign commerce; but even that trade the Convention felt impelled to tolerate for a time, for the Constitution contained a provision that Congress must not prohibit the importation of slaves prior to 1808, and declared (Art. V) that this provision should not be amended until after that date. But it made no reference to the slavery then existing in most of the States, and if it had contained a provision for its extermination it is likely it would never have been adopted. But as the national domain extended westward and new States were formed, opposition to slavery grew. For a long time its opponents only contended that Congress should exclude it from all new States as they were formed, but in time the cry arose that it should be abolished in those old States in which it had always existed. The contentions over the right of each State to determine for itself whether or not slavery should exist within its boundaries stirred the country into angry passion, and had much to do with bringing on the Civil War. At its close, the Thirteenth Amendment was adopted, and was proclaimed ratified on December 18, 1865. It declared that "neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist in the United States or any place subject to their jurisdiction." Slavery can now exist in no part of the United States, or in any Territory or in any island or other possession belonging to the United

States. Its final abolition removed the most serious conflict that ever existed between the States and the Union, and now their relations promise only peace and harmony for the future.

Of course this amendment does not prevent a State from punishing a person who has been convicted of a crime, by compelling him to work on streets or public roads or in a prison. But it does prohibit a State from enacting a law authorizing one person to own another, or to compel any adult who has not been convicted of a crime to work against his will. Some dishonorable persons will not keep their contracts to work for another, and there is no lawful way by which they can be compelled to keep them; they cannot be coerced or forced into fulfilling their agreements. The employer's only remedy is to sue them for damages for a breach of contract, and recover a judgment for the amount of damage he has sustained, and then have the sheriff or other court officer sell so much of their property as will pay that judgment. But that course is often no remedy at all, for such persons rarely have any property that can be seized by the sheriff.

137. Equality of Suffrage.—The Fifteenth Amendment, proclaimed ratified March 30, 1870, is in these words: "The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude." This amendment was made to secure to former slaves and their descendants the right to vote. In some States, however, legislatures have adopted an educational qualification for voting, and such tests are not in conflict with this amendment. It does not confer the right to vote on any one. It simply says that neither the State nor the United States can deny to a citizen that right because of his color, race or previous condition of servitude. The State can deny to its citizens the right to vote on any other valid ground; but it cannot enact an election law that discriminates against any citizen because of his color.

138. Equality of Citizenship.—The Fifteenth Amendment does not confer the right to vote upon any one. It simply says that the right to vote cannot be denied to any citizen because of his race or color. But it was once thought that each State would be induced by certain provisions of the Fourteenth Amendment to confer the right to vote on all male citizens twenty-one years of age. That amendment says that "when the right to vote is denied to any male citizen twenty-one years of age, except for crime, the number of Representatives which the State shall have in Congress and the number of electoral votes which it shall have for President shall be reduced in the proportion which the number of male citizens thus denied the right to vote shall bear to the whole number of male citizens twenty-one years of age in the State." It was thought that rather than run the risk of having the number of its Representatives in Congress reduced, and of losing some of its electoral votes for President, a State would always grant to every male citizen, except those convicted of crime, the right to vote. But this provision has never been enforced, for two reasons: (1) To enforce it would take away from the State the power to say that every voter must have a certain amount of education before he can vote. To provide that every man can vote might be to turn the State over to ignorant men who do not have any intelligent understanding of our institutions. (2) It would be an almost impossible thing to determine how many men at any election have been denied the right to vote because they cannot read or for any other reason. It does not follow that because a man has not voted he was denied the right to vote, for it is a well-known fact that in every State many citizens habitually abstain from going to the polls. So this part of the Fourteenth Amendment, it has been found, does not force the States to confer the right to vote upon colored citizens. In fact, Congress has never yet tried to enforce it.

But the Fourteenth Amendment went very much further than this. It declared that: "No State shall make or enforce a law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." It was once thought that this provision gave Congress power to destroy the individuality of the States; that it so centralized power in the Union that the political independence of the States was wholly at the mercy of Congress. But the Supreme Court in numerous decisions has shown that such is not the fact. It does not give Congress power to regulate the conduct of private citizens. It does not give Congress authority to compel any citizen to receive other citizens on terms of social equality, or to receive both white and colored persons as guests at his hotel or theatre; nor does it deny to him the right to refuse to employ other citizens because of their color. It simply prohibits the State from doing certain things. A State acts through its legislature or its courts or its officers, and this amendment prohibits them from denying to its citizens the equal protection of its laws. Its laws must apply to all persons alike. The State, as such, cannot enact a law that specifically discriminates against one class of citizens. The Supreme Court has held that this part of this amendment simply means that no State, in enacting and enforcing its laws, can discriminate among its citizens because of their race or color; but that it does not prohibit the people of a State from so discriminating among themselves.

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CHAPTER XV.

THE PRESIDENT.

139. The Chief Executive.—We now turn for two chapters from the legislative to the executive department of the Government. The Constitution says that "the executive power shall be vested in the President of the United States of America." It mentions no other officer; it names only the President. It is necessary to note at the outset of the discussion that it says that the executive power of the nation is vested in him, which means that it is vested in him alone. By so doing, one will have a clearer understanding of what is further said in this and the next chapter.

Congress passes laws prescribing how the affairs of the Government shall be conducted, and the officers who conduct those affairs are executive officers. They execute what the law prescribes or the courts direct to be done. They are called executive officers for that reason. The power to originate is in Congress; the power to carry out is in the executive officers. Congress by enacting a law marks out a governmental policy; the carrying out of that policy is an executive matter.

The chief executive officer is the President; in fact, all executive power is lodged in him, and all other executive officers are simply his assistants or representatives. They are all appointed by him, or by other officers who have themselves been appointed by him, and are all under his control and subject to his direction; and while the most of them are appointed for a term of four years, yet for improper conduct he may remove them at any time, and in some cases he may determine their conduct to be improper without giving any reason therefor, either to the officer or to the public.

This applies to all higher executive officers and to almost all others, except purely public service employees, such as postal clerks and mail carriers and most department clerks, whose connection with the Government is simply that of employment, and who, in late years, have been protected from being discharged from such service on the election of another President by a series of laws called Civil Service regulations. Such employees can hold their places so long as they do their work well and behave themselves.

But the conduct of many executive officers reflects the principles of the President. They should therefore be in harmony with him, and unless they are he can remove them.

Of all executive officers the President alone (and of course the Vice-President) is elected by the people; all others are appointed. It is not so in the States. In most of the States all the higher executive officers are elected. But no other executive officer of the United States except the President can ever be elected so long as this clause of the Constitution remains unchanged—the clause that says “the executive power shall be vested in the President.” If that power is vested in him he must have the right to say who shall act in his stead in executing it. He cannot perform all executive duties himself; the work is too much for one man. He must have many assistants to act in his stead. It would be clearly unjust to hold him responsible for failure to require an executive duty to be performed in a satisfactory way and yet not give him power to say who those assistants shall be. All other executive officers are the President’s arm, and he must have an unshackled arm, and that means that he must have the right to appoint other executive officers in harmony with himself, and remove them whenever he believes they are trying to discredit him or the public good demands their removal.

But the President does not have an unlimited power of appointment. All his important appointments must be ap-

proved by the Senate. It can reject any of them at will. The Senate, therefore, always stands between him and the people, and if he should be indifferent to their rights it can check him. This is a wise provision. It not only enables him to test public sentiment; it forces him to be regardful of the people's interests and wishes.

On the other hand, it subjects both President and Senators to a political dicker. The dicker would be that they will agree to support certain bills which he wishes to become laws, if he in return will agree to appoint certain men to office whom they recommend. In that way the President may exercise great influence over legislation and the Senate have much to do with executive affairs. This is frequently a hurtful thing. Such political dickerings have more than once become national scandals, and violent political quarrels have grown out of the President's refusal to be dictated to by the Senate, or the Senate's resentment of the President's intermeddling with legislative matters. These jarrings between the President and Senators are not hurtful if both are animated with a supreme desire to promote the public good; but contentions or bargains that grow out of a desire solely to promote the interests of a political party or to advance the political fortunes of a Senator or of the President are not only hurtful, but often prostitute the purposes of government.

It should never be forgotten in this country that all government—whether national or state or county or city or school—is for the good of the people, and must be conducted solely for their welfare, and if those they elect to office will not use their offices in the people's interest they should turn them out and elect others in their stead. At the same time the people should be just, and when they get a faithful public servant they should be glad to honor him with their votes.

140. Term of Office.—The President is elected for a term of four years, beginning on the fourth day of March next after the election. He may be then re-elected for an-

other term. There is nothing in the Constitution which prohibits him from being elected again and again. But no President has ever served longer than two terms, nor has one ever been nominated for a third term by any party.

141. His Qualifications.—He must be a natural-born citizen of the United States, at least thirty-five years old, and have been for fourteen years a resident within the United States. No foreign-born person can be President. The qualifications of the Vice-President are the same.

142. Vacancy.—In case of the death or removal or resignation of the President, the office devolves on the Vice-President, who fills out the remainder of his term. If both should die, the vacancy is filled by the members of the President's Cabinet in the order of their rank, beginning with the Secretary of State.

143. Salary.—The President's salary can not be increased or diminished during the period for which he was elected. At the present time this salary is \$75,000 per year, and besides this amount the appropriations made for furnishing and supporting the executive mansion amount to several thousands more, but the President can retain no part of such appropriations.

144. Powers and Duties.—The President shall be (1) commander-in-chief of the army and navy. The army and navy are parts of the executive department of the Government, and therefore it is proper that the President should be their commander.

(2) He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur. The terms of a treaty are first agreed to by him. Then the Senate agrees to so much of it as it deems best, and then that part, if the other nation concurs, becomes binding on both nations. If the Senate rejects the treaty that is the end of it. The President must

then negotiate another or abandon the matter. The Senate cannot negotiate a treaty; it can only approve or reject or amend the treaty the President has negotiated.

(3). He shall appoint ambassadors, ministers, consuls, judges of the Supreme Court, and all other officers of the United States whose appointment is not otherwise provided for, but such appointments must be made by and with the advice and consent of the Senate; that is, they must be confirmed by that body to be valid; and Congress, by law, may vest the appointment of inferior officers in the President alone, in the heads of departments, or in the courts; and, it has invested the heads of departments with the appointment of a great many and the courts with the appointment of a very few. All executive officers, except those appointed in the recess of the Senate, are commissioned for four years, but they hold over after the four-year period has expired until their successors are appointed and qualified, and by "qualified" is meant that the appointee has been commissioned by the President (that is, a certificate which is his title paper to the office has been signed and issued by the President), and has given whatever bond the law requires, and has taken an official oath, which is usually to support the Constitution and obey the laws and faithfully demean himself in office. But in many cases, a vacancy occurs whenever the President chooses to make it. If he appoints another man to the office, whether the four-year period has expired or not, the incumbent is thereby ousted. A vacancy may occur during the recess of Congress. In such case the President fills it by an appointment which extends to the end of the next session of Congress, if the Senate refuses to confirm it, but if it confirms it, it extends, if the office is an executive one, to the end of the four-year period. If it refuses to confirm it, he may send in another name at once, or he may wait until its adjournment and then make another appointment, which will again extend to the end of the next session, unless sooner

rejected or confirmed. The Congress invests certain higher and even certain inferior officers with the appointment of their assistants, but even then the President may have something to say as to who those assistants are to be, for if they are not agreeable to him, he may remove the officer who selects them.

(4) He shall, by message or otherwise, give to the Congress information on the state of the Union, and recommend to their consideration such measures as he shall deem necessary. Washington and Adams appeared before Congress and delivered their messages by a speech, to which Congress replied. But their opponents stigmatized this practice as "monarchical," as being an attempt to follow the practice of the English king. Accordingly Jefferson, who did not have much patience with kingly customs, and who was withal a powerful writer but a poor speaker, wrote out his messages and sent them by messenger to the Congress; and from his time on the succeeding Presidents followed his example, until the time of President Wilson, who, when a pressing national matter or an acute international situation had arisen, usually appeared before the two houses in joint session in the House of Representatives, and, either reading or speaking his address, laid before them such information as he thought proper to give, pointing out the course he considered it the duty of the Government to pursue, and asking their co-operation or advice in pursuing that course.

(5) The President may, on extraordinary occasions, convene both houses, or either of them, in extra session, and (6) if they cannot agree upon a time of adjournment, he may adjourn them to such time as he may think proper, but not beyond the time of the beginning of the next regular session.

(7) He shall receive ambassadors and other public ministers from other nations, thereby opening the way for establishing friendly relations between those nations and our own, or affording a means of adjusting any difficulties that

have arisen between their governments and ours, or between citizens of their countries and citizens of this.

(8) He shall take care that the laws be faithfully executed, and (9) he shall commission all officers of the United States.

The President's duty to see that "the laws are faithfully executed" is his chief duty. The "executive power" is vested in him, and he is the Chief Executive. Whether the laws prove efficient to correct the wrongs they were passed to remedy may depend on the firmness and justice with which he tries to execute them. He is not above law himself; he is as much bound to obey it as the humblest citizen. He is the servant of the people, in that he was chosen to see to it that their will, as expressed in their laws, is faithfully carried out.

145. Veto Power.—But the President is something more than the Chief Executive. He also has much to do with legislation. If a bill passes Congress he can veto it, that is, refuse to sign it, and return it with his objections to the house in which it originated. That is the end of it unless two-thirds of the members of each house vote to pass it in spite of his disapproval. Thus he is in one sense a "third house." It is very difficult to pass a bill which he has vetoed. It, therefore, becomes necessary always to take his attitude into account in considering the chances for enacting any important legislation. If he belong to one party, and the majority of each house to another, the chances are exceedingly slim that any bill will ever be passed over his veto; and if he and that majority belong to the same party, to pass a bill over his veto may mean a rupture in that party, and its consequent defeat at the next election. Nevertheless, the President's veto has at times proved to be one of the most valuable features of the Constitution, for it may be used to block hurtful or inconsiderate legislation, and to concentrate public attention on the proposed measure, and when that is

done, his veto may rally the country to his support or have no more effect than to postpone for a short time a needed law. On the other hand, his veto vests him with an immense power to influence legislation and to "whip members of Congress into line." To use his office in that way would be an abuse of his powers. The purpose of giving him the veto power was to enable him to block a headlong Congress or override its mistakes. It was never designed that he should be a legislator. Congressmen are chosen as the people's representatives to make laws, and the President's primary duty is to see that those laws are executed, but it is also his duty to use his veto power to defeat hurtful legislation.

146. Powers and Duties of Vice-President.—The Vice-President has very few duties. He presides over the Senate, but does not appoint its committees, which are appointed by the Senate itself in its own way. He takes no part in debate, and cannot vote except when the Senators are equally divided on a bill or proposition, when he has a "casting vote" to decide the matter. The office is of small importance except when a vacancy occurs in the office of President. Then it becomes all-important, for he immediately becomes President. If he does that or dies or resigns, no provision is made for filling the vacancy in the office of Vice-President until the next election. The Vice-President's salary is \$12,000 per year.

147. How Elected.—The people do not vote directly for President and Vice-President. They are elected by electors chosen by the people of the respective States, each State being entitled to as many electors as it has Senators and Representatives in Congress. The whole number at the present time, therefore, is 531; and a candidate to be elected President or Vice-President, must receive the votes of 266 electors. A Territory can take no part in the election of President.

These electors must be chosen in all the States on the same day, but in each State they are to be chosen "in such manner as the Legislature thereof may direct," and formerly they were chosen in at least half the States by the legislatures themselves, and they were chosen in that way in South Carolina until recent years; but now in every State they are chosen by the vote of the people, on the first Tuesday after the first Monday of November in each leap year and each centennial year.

The Governor makes out four lists of the persons who have been chosen electors in his State, and sends one to the Secretary of State at Washington, and delivers the other three to the electors, who meet somewhere within the State on the second Monday of January after their election and vote by ballot for President and Vice-President, and make three lists of all persons voted for by them for President, and three separate lists of all persons voted for for Vice-President, and of the number of votes for each. They then attach the Governor's list of their names to each pair of their lists, and deposit one pair with the judge of the United States court in whose district they meet, and transmit another by mail, and send the third by special messenger, forthwith, to the president of the Senate at Washington, which officer on the second Wednesday in February, in the presence of the Senate and House, opens the lists and causes the votes to be counted, and the person who has received the greatest number of all the votes for President shall be President, if such number is a majority of all the electors chosen by all the States.

If no person has such majority, the election of a President then devolves on the House of Representatives, the vote there being taken by States, each being entitled to one vote, and the person who receives the vote of a majority of the States is declared elected President, and if no person receives such majority by the fourth of March, the Vice-President shall act as President just "as in case of the death of the

President." When the election devolves upon the House its choice must be made from the persons, not exceeding three, who received the highest number of electoral votes. Twice since the formation of the Union the President has been elected by the House of Representatives. The first time was in 1801, when Thomas Jefferson was elected, and the next was 1825, when John Quincy Adams was chosen by that body.

If no person receives a majority of the electoral votes cast for Vice-President, the election devolves on the Senate, which makes choice from the two men who have received the highest number of electoral votes, and the person receiving the vote of a majority of all the Senators shall be Vice-President.

This method of electing the President and Vice-President is prescribed in Amendment XII, which was declared ratified September 25, 1804. It was adopted because of the unsatisfactory method prescribed by the original Constitution. By that method each Presidential elector voted for two candidates on the same ballot, and the one who obtained the greatest number of votes, if that were a majority, was to be President, and the person obtaining the next greatest number of votes was to be Vice-President, whether such number were a majority of the electoral vote or not. In 1789, John Adams received 34 votes when the total number of electors was 73, yet according to the Constitution, as it was then, he was elected Vice-President. In 1800 Thomas Jefferson and Aaron Burr each received 73 votes—a majority of all the electoral votes, but neither had "the greatest number of votes." It was well understood by the electors themselves, and by the people who had chosen them, that Mr. Jefferson was the candidate for President, and Mr. Burr the candidate for Vice-President. But the electors had no power, under the Constitution as it then was, to vote for one for President and for the other for Vice-President. The 73

electors who belonged to the same party as Jefferson and Burr did, therefore cast one vote each for each of them, and hence neither had "the greatest number." When the Constitution was first framed it was supposed that the electors would exercise some discretion in casting their votes for President; that they would not be the mere mouthpiece of a party, but would cast their votes for that man who they believed was the choice of the people. They were supposed to look about and ascertain who that man was. It was not conceived that two men could be of equal favor with the people, and hence it was supposed that one would always get more votes than the other, and it was intended by the Constitution that the one who got the votes of the greatest number of electors, if they were a majority, would be the President, and the one who got the next highest number, whether a majority or not, would be Vice-President. But by 1800 parties had formed, with rigid lines. Each put forward its candidates for President and Vice-President, but only one set of electors could be chosen for each State, and when those electors came together they could not vote for one candidate for President and another for Vice-President. All they could do was to vote for two candidates, without designating which was to be President and which Vice-President. Thus it came about that Jefferson and Burr each got the same number of votes—each got all the electoral votes of the States which had been carried by the party to which they belonged. The election, therefore, devolved upon the House of Representatives, which chose Jefferson. But nevertheless the country had been violently disturbed by intrigues which formed between Burr and the enemies of Jefferson to wrest the Presidency from him. It was foreseen that such results might follow every election so long as parties lasted. For that reason the Constitution was changed, so as to permit each elector to cast one vote for President and one for Vice-Presi-

dent, and that change was made by the Twelfth Amendment.

148. Presidential Electors.—By the practice of parties, but not because the law so says, for parties are purely voluntary organizations, each party chooses delegates from each State, usually two from each Congressional district and four from the State at large; that is, each State has twice as many as it has Senators and Representatives in Congress. These delegates meet in national convention and nominate, for the party by which they have been chosen, one candidate for President and another for Vice-President. Then a State Convention of the party is held, and one Presidential elector for each Congressional district and two from the State at large are named, and at the election in the succeeding November those voters who desire the election of the candidate of that party for President vote, not for him, but for this set of electors, and if they receive more votes than any other set all of them are expected to vote for him when they meet on the second Monday of the following January. Of course, if he should die before they meet to cast their votes, they would vote for some other man, but otherwise they would be considered guilty of the grossest perfidy if they did that. There is no written law that compels them to vote for the candidate of the party by which they were selected, yet so thoroughly understood has it become that they will do so that it is now known almost before midnight following election day who will be the next President.

When electors are chosen in this way, each voter votes for as many as the State is entitled to, and if one set carries the State by never so small a plurality their party's candidate for President gets the votes of all of them. But they are not always chosen in this way. They are to be chosen in each State as the Legislature directs.

In Michigan more than twenty years ago the Legislature directed that one elector should be chosen by the people of

each Congressional district, and two from the State at large, so that each voter voted for only three, instead of the whole number to which the State was entitled. In this way, in 1892, Mr. Cleveland got five electoral votes from that State, and General Harrison the rest.

Even in those States in which the Legislature has by law directed that the names of all the candidates for Presidential elector be printed on the tickets of the party by which they have been selected, and has authorized each voter to vote for the whole number, a part of them might be elected, and the balance fail of election. For instance, Missouri, having two Senators and sixteen Representatives in Congress, is entitled to eighteen Presidential electors, and the names of eighteen candidates will be printed on the Democratic tickets, and the names of eighteen other candidates on the Republican tickets, and every voter who wishes the Republican candidate for President to be elected can vote for the eighteen men whose names are on the Republican tickets, and every voter who wishes the Democratic candidate for President to be chosen can vote for the eighteen men whose names are on the Democratic tickets; but they are not compelled to vote for the whole eighteen. They can scratch off one or more names if they wish to do so; they can even go further, and write in the names of those on the other party's ticket in place of those they have stricken off. By that means, if the election should be close in the State, some of the candidates for Presidential elector of one party might be chosen, and some of the other party. And those of one party, when they meet in January, would vote for one candidate for President, and the others would vote for the candidate of the other party.

To be elected, a candidate for Presidential elector does not have to receive a majority of the votes cast in the State; he must receive simply more votes than his nearest competitor. But a candidate for President, in order to be elected,

must receive a majority of all the votes of the electors chosen by all the States.

The Constitution provides that the electors shall meet in their respective States and vote by ballot for President and Vice-President, "one of whom at least shall not be an inhabitant of the same State with themselves." Therefore, in order that all electors may vote for both candidates of their party, those candidates are always taken from different States, and hence it is a fact that the President and Vice-President are never residents of the same State.

149. Qualification of Electors.—No Senator or Representative can be a Presidential elector, nor can any person who holds "any office of profit or trust under the United States." This bars postmasters and all United States officers. But it does not disqualify State officers, but in some of the States they are disqualified by State laws.

150. Electoral Vacancies and Contests.—If an elector between the time of his election and the meeting of the electors on the second Monday in January should die or fail to attend, those electors present at the meeting choose some one to fill the vacancy. This is the law of nearly every State, and no embarrassment is likely to come from that plan.

But sometimes it is doubtful which set of electors has carried a State. In that case, the legislature or courts of the State may decide which set has been legally elected, and that decision is final if it is made six days before the second Monday in January. If not made before that time, the Congress may decide which set was legally elected at the polls, but where there has been no decision by the legislature or the courts, both houses must concur before any elector who the Governor has certified was elected can be rejected.

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25. Describe the meeting of electors, their duties, and the counting of their votes. (147)
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27. If no person receives the vote of a majority of electors for Vice-President, how is he chosen? (147)
28. Why was amendment twelve adopted? (147)
29. Describe how Presidential electors are chosen. (148)
30. Are they compelled to vote for the candidate of their party? (148)
31. How many electors does each voter vote for? (148)
32. Are they always chosen in this way? (148)
33. Why are the President and Vice-President never residents of the same State? (148)
34. What persons cannot be electors? (149)
35. How are electoral vacancies filled? (150)
36. How are contests over electors settled? (150)

CHAPTER XVI.

THE EXECUTIVE DEPARTMENTS.

151. The Cabinet.—The executive business of the Government has been arranged under ten general divisions, called executive departments. The work of each department is superintended by one chief officer, selected by the President. The heads of these departments, in the order of their rank, are the Secretary of State, Secretary of the Treasury, Secretary of War, Attorney-General, Postmaster-General, Secretary of the Navy, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce and Secretary of Labor. These officers constitute what is called the President's Cabinet. They are his immediate assistants and closest advisers. At stated times they meet him in conference and discuss the affairs of the nation. No record of these meetings is kept, for the discussions in the nature of things must often be confidential, and for this reason and other intimate relations between him and them the Cabinet is sometimes called the "President's official family." Of course the President exercises a general directing control over all the departments, and his orders must be obeyed by each Cabinet officer.

They are not designated the Cabinet in the Constitution. In fact, the word "Cabinet" nowhere appears therein, but the words "heads of departments" do, and as the heads of departments in England have long been styled the Cabinet our heads of departments are also called the Cabinet after the English usage, but they differ very widely from the Cabinet in England. They do not attend the meetings of Congress and propose legislation, as in England. They are often invited to attend the meetings of committees and give information on the affairs of the Government, and the needs of their departments, and once a year they publish

extensive reports showing the work and expenses of those departments in detail. But beyond this they have nothing to do with shaping legislation.

A Cabinet officer receives a salary of \$12,000 a year.

152. Department of State.—The Secretary of State is the head of this department, and he is the only officer who is authorized to communicate with other governments in the name of the President. To him belongs the duty of directing the work of ambassadors, ministers, consuls, and other diplomatic officers and agents stationed in other nations to look after the affairs of this nation there. They receive instructions from him and whatever communication they may make to their home Government is usually made through him. Negotiations for treaties are carried on through this department. It is sometimes called "the office of foreign affairs," for all matters pertaining to our relations with other nations are conducted through it.

Ambassadors are the highest diplomatic officers. They represent this Government at the capitals of the principal nations, like England, Germany and France, and aid in negotiating treaties, and inform those governments of the objections the President may have to any action they may be about to take which would affect our rights there or in any part of the world. Ministers perform the same duties at the capitals of lesser nations, such as Mexico and Spain. Consuls are not diplomatic officers at all, but their duties are to aid in facilitating our trade with foreign countries, to look after the comforts and rights of citizens who go abroad on business or pleasure, to administer on their estates in case of their death, and to exercise a protective care over seamen, and in some non-Christian countries, such as China and Japan, they take jurisdiction over criminal cases in which Americans are concerned.

153. The Treasury Department.—This department is second in rank, but in times of peace is often first in impor-

tance. The business of the Government is brought closer to the people through it than any other, unless it be the Post Office. The Secretary of the Treasury is the head of it, and he is assisted by auditors, comptrollers, treasurers, collectors of ports, internal revenue collectors, and thousands of minor officers. Through this department import duties and excise taxes are collected and disbursed, gold and silver is coined, and other paper money is issued, and Government bonds are issued, sold and paid. It exercises a watchful control over national banks, and has charge of all moneys belonging to the United States. The Secretary of the Treasury is chairman of the Federal Farm Loan Board, a member of the Federal Reserve Bank Board, and he and these boards, more than any other officers, must watch the effect of the volume of money and the use of different kinds of money on the business of the country.

In New York, New Orleans, St. Louis and several other large cities are branches of the Treasury, called sub-treasuries, which have been established that the public moneys may be more readily received and that one kind of money may be quickly exchanged for another, for instance, gold for greenbacks, or silver certificates for silver dollars. Connected with this department are also the five Government mints at Philadelphia, San Francisco, New Orleans, Denver and Carson, which coin gold and silver and minor coins as directed by Congress.

No man directly interested in trade or commerce can be appointed Secretary of the Treasury, and the office has almost always been filled by "men of small incomes bred either to politics or the legal profession." Yet no department of the Government has been more faithfully administered.

153a. Rural Credits System.—Connected with the Treasury Department is the Federal Farm Loan Bureau. Desiring to encourage industrious families of small means

to own farms, Congress in 1916 undertook to work out a plan by which farmers may borrow money at low rates of interest and on terms of easy payments, and use it in acquiring and improving farms. The plan adopted utilizes in part the principles upon which building-and-loan associations in towns are built.

The whole country is divided into twelve districts, and in a central city in each is a Federal Land Bank, which must have a capital of not less than \$750,000 with which to begin business.

Throughout that district are numerous local organizations called National Farm Loan Associations. There may be one for every county, and that is the usual rule, but ten or more persons desiring to borrow money by giving first mortgages on their farms as security may form such an association, provided the amount all of them wish to borrow is not less than twenty thousand dollars. It is through these associations that money is borrowed by its members from the district Federal Land Bank. Each farmer wishing to borrow money from the bank becomes a member of the association by paying five dollars for each one hundred dollars he wishes to borrow. For each five dollars so paid in by him (which means five per cent of his loan) he is issued a stockholders' certificate and he has one vote for each certificate in electing directors of the association. There are not less than five directors and they must be chosen from the stockholders. The association has a committee to pass on applications for loans, and to appraise the value of the farm which the borrower offers as security; and lest the committee put an unjust valuation upon it, there is a disinterested appraiser to make personal examination and fix an independent valuation.

At the outset when these banks were being organized the money paid by the stockholders for their stock certificates was sent to the district Federal Land Bank and used to constitute its capital, and if as much as seven hundred and

fifty thousand dollars was not obtained in that way from prospective borrowers within a designated time the Secretary of the Treasury in the name of the Government subscribed for the deficiency and money equal to the amount subscribed by him was taken out of the Treasury and turned over to the bank. After the capital of a bank reaches seven hundred and fifty thousand dollars twenty-five per cent of all sums thereafter subscribed is applied each year to paying back to former subscribers in the order of their subscriptions the five per cent paid in by them. Thus, in time all subscribers (including the Government) have been or will be paid back the money paid for their stock, and the bank's capital will be kept at not less than seven hundred and fifty thousand dollars.

The smallest loan that can be made to any one person is one hundred dollars, and the largest ten thousand, and every loan must be secured by a first mortgage on land worth twice the amount borrowed. The borrower can designate the number of years he wishes the loan to run, which cannot be less than five nor more than forty, and he must pay a part of the principal each year. The interest and principal are so calculated and apportioned among the years that it is ascertained in advance just how much of each he must pay each year in order to extinguish the whole at the end of the period for which the loan is to run. The whole (principal and interest, as thus ascertained) is divided into installments of equal size, and the borrower is required to pay one installment each year until all are paid, except that after five years he can pay one or more (even the entire debt) on any installment date. This is one of the best features of the system, for it affords the farmer a plan by which in fat years he can pay ahead on his installments, and thus avoid the hardship of paying them in subsequent lean years.

When the bank has received these mortgage notes to

the amount of fifty thousand dollars or more it issues an equal amount of farm loan bonds, bearing not to exceed five per cent interest, and sells them to any person wishing to buy, and uses the money in making loans to other farmers, and as fast as the notes are paid an equal amount of bonds is paid off and retired; or, instead of retiring the bonds, the notes may be surrendered to the persons paying them and the money paid loaned to other farmers and their notes used to replace those surrendered. Thus, whether the one or the other method is pursued, the bonds are always supported by an equal amount of notes secured by mortgages on land worth twice their amount.

Thus it will be seen how the bank obtains the money with which it makes loans: To begin with, farmers wishing to borrow money pay into the bank five per cent of the amount to be borrowed, and that is continued until the bank has seven hundred and fifty thousand dollars on hand; second, when loans to the amount of fifty thousand dollars or more are made bonds equal to the amount of the mortgage notes are issued and sold for money; third, that money is in turn loaned to other farmers, and other notes equal to the amount of the loans and secured by mortgages on their farms are taken up by the bank; fourth, these notes are in turn used as a basis for another bond issue; and, fifth, as the notes are paid off, an equal amount of bonds is called in by the bank, paid off, and cancelled.

All farm notes, bonds and mortgages are exempt from taxation of every kind.

The rate of interest the notes must bear is equal to the rate of interest the last bonds issued bore, plus one per cent. For instance, if the last bonds issued bore four per cent the borrower must pay five per cent interest on the amount loaned him, and if they bore five per cent he must pay six per cent interest; but in no case is he required to pay more than six per cent. The one per cent extra is to cover expenses

and profits. It will often be the case that four-per-cent bonds, since they are non-taxable, can be sold at par; in which event, the next borrower from the bank will pay five per cent interest.

The money borrowed can be used only to purchase land for agricultural uses, or to pay off existing mortgages, or to erect buildings and other improvements, or to purchase fertilizers, live stock and other equipment necessary for the proper operation of the mortgaged farm. And the bank can loan money only to farmers, or to persons about to become farmers, and it can engage in no other kind of business.

The entire system is under the active control of the Federal Farm Loan Board, consisting of the Secretary of

ILLUSTRATION OF A FEDERAL FARM LOAN.

The following table shows the annual payment a farmer must make for a loan of \$1,000 for 20 years at five per cent interest, how much of that payment is interest and how much principal, and how much principal remains unpaid at the end of each year.

Years.	Total annual payment.	Interest at five per cent.	Paid on principal.	Amount of principal still unpaid.
1.....	\$80.24	\$50.00	\$30.24	\$969.76
2.....	80.24	48.48	31.75	938.00
3.....	80.24	46.90	33.34	904.67
4.....	80.24	45.32	35.01	869.66
5.....	80.24	43.48	36.76	832.90
6.....	80.24	41.64	38.59	794.31
7.....	80.24	39.71	40.52	753.79
8.....	80.24	37.68	42.55	711.23
9.....	80.24	35.66	44.68	666.56
10.....	80.24	33.32	46.91	619.64
11.....	80.24	30.98	49.26	570.39
12.....	80.24	28.51	51.72	518.67
13.....	80.24	25.93	54.31	464.36
14.....	80.24	23.21	57.02	407.34
15.....	80.24	20.36	59.87	347.46
16.....	80.24	17.37	62.87	248.60
17.....	80.24	14.23	66.01	218.51
18.....	80.24	10.93	69.31	149.28
19.....	80.24	7.46	72.78	76.50
20.....	80.33	3.83	76.50	
Totals.....	\$1,604.89	\$604.81	\$1,000.00	

the Treasury and four other members appointed by the President, at a salary of ten thousand dollars a year. The board appoints registrars, appraisers, examiners, attorneys, inspectors and other employees to assist them in requiring every loan and every transaction of all farm loan banks and of all farm loan associations to be done honestly and in strict compliance with the law. Each Farm Loan Bank has nine directors, of whom three are appointed by the board to represent the public interest, and the other six are elected by the farm loan associations, and these directors choose the bank's officers and are responsible for its management.

154. The War Department.—The Secretary of War superintends the military affairs of the United States and their islands. He has supervision over the enlistment of soldiers, in all branches of the Army, in times of war or peace, the movements and concentration of armies, and the construction of forts, arsenals and magazines. The department supplies the army with clothing, rations, guns, ammunition, trucks, horses, trains and all needful equipment, and the National Guard with some of these things. The Army and Guard have been fully described in Chapter XII.

Connected with this department and so closely joined to the work of the Army as almost to be a part of it is another sub-department called the Engineer Department, which has charge of river and harbor improvements.

155. The Department of Justice.—The Attorney-General is the head of this department. He is the legal adviser of all other departments. He appears in the Supreme Court in all suits in which the interests of the United States are directly involved, and in every district court throughout the country there is a district attorney or assistant attorneys to represent the Government in prosecuting violators of the laws of Congress.

156. The Post Office Department.—This department has no other business except to receive, collect, carry and de-

liver the mails, issue and cash money orders, and carry on the business of the Postal Savings System; but so extensive is the amount of that work that elsewhere a whole chapter is given to it (Chapter XI). The head of the department is the Postmaster-General.

157. The Navy Department.—The Navy consists of warships, docks, navy yards, and the officers and men in the navy service. These ships are sent into every part of the world where an American citizen or American trade may need protection, or American rights may be impaired. The Navy is the Government's police on the high seas. It is its fighting force on water, as the Army is on land. The dominion of all nations extends three miles from shore into the ocean. Within that three-mile belt the nation has the same authority that it has on land. But beyond that zone, the ocean is the world's highway, on which all nations have the same rights. Merchant ships, or vessels that carry persons and things from one country to another, travel that highway, and it is the duty of our Government to protect our merchant ships and our citizens who are passengers upon them or upon any other merchant ship in their right to peaceably travel upon the high seas. Along the coast are fine cities, and they, too, must be protected from any foreign enemy. The Navy is created and maintained for that purpose.

It is through the Navy Department that orders for the building and movements of ships, and for the supply of guns and ammunition and all kinds of naval equipment, are made, and the superintendent of the department is the Secretary of the Navy.

158. The Department of the Interior.—This department was not organized until 1849. The work of issuing patents to inventors, of surveying and selling the public lands, of granting and paying pensions, belongs to the Interior

Department. Besides, there belongs to it the work of establishing Indian agencies and supplying Indians with such money, clothing, food and education as Congress grants these "wards of the nation." In addition, there is a bureau of education, whose work consists chiefly of gathering statistics concerning all kinds of schools, and collecting and publishing under proper heads educational information.

158a. The **Irrigation** or reclamation of arid lands is, also, a part of the work of this department. In 1902 the policy of the Government in reference to public lands was changed. Prior to that time the net proceeds derived from all lands sold to settlers was turned into the Treasury, and disposed of as revenue. But in 1902 Congress provided that ninety-five per cent of the net proceeds thereafter derived from the sale of "public lands in Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington and Wyoming should be used in constructing ditches and reservoirs for the irrigation or watering of the arid and semi-arid lands" lying in those States. These lands are very rich if they can be properly watered. The purpose of this irrigation scheme is to collect the water which comes from snow or rain in the mountains, and instead of permitting it to run off to the sea through the long rivers, to turn it through these ditches across the plains, and distribute it at the proper times over these dry lands. No one can foretell the amount of the things that go to feed and clothe men which may be produced from these heretofore barren lands as the result of this comprehensive scheme to make them productive.

158b. A **Pension** is a sum of money awarded to a soldier or sailor or his family, for his past service in a war. Pensions are of two kinds: service pensions, and invalid or disability pensions. A service pension is an allowance of so much per month to all soldiers who served in a certain war whether

they were or are disabled by disease or not, or are dependent or poor or not. An invalid pension is a certain allowance to soldiers who were disabled by wounds or sickness incurred in war, or who have since become disabled by disease or any other cause. Prior to 1890 pensions were granted to soldiers of the Civil War, or to their widows and minor children, only on account of disability or death due to service in the war. But in that year provision was made for a pension of \$12 per month for any soldier who had honorably served for ninety days in the war and had become permanently disabled from any cause to earn a support by manual labor.

In 1912 the law was so changed as to provide for a service pension. That pension varies according to age and length of service. Any soldier or sailor who honorably served the United States for ninety days in the Civil War and who has reached the age of sixty-two years, is allowed a pension of thirteen dollars per month, and that amount is increased according to age and length of service, so that a soldier or sailor who served two years or over and has reached the age of seventy-five years receives thirty dollars per month. That law also provided for a disability pension, for it declared that any soldier or sailor who was wounded in that war or otherwise disabled in line of duty and by reason thereof is

Pensions of the Several Wars.—The Commissioner of Pensions, in his annual report of 1916, says: "The amounts that have been paid for pensions to soldiers, sailors and marines, their widows, minor children and dependent relatives on account of military and naval service, between 1790 and June 30, 1916, are as follows:

War of the Revolution (estimated).....	\$70,000,000.00
War of 1812 (service pension).....	45,991,743.76
Indian Wars (service pension).....	13,790,299.13
War with Mexico (service pension).....	50,422,229.22
Civil War.....	4,765,075,020.92
War with Spain and Philippine insurrection.....	53,744,667.55
Regular establishment.....	39,098,319.01
Unclassified.....	16,508,447.41
Total.....	\$5,054,630,727.00

unable to earn his support by manual labor, shall receive a pension of thirty dollars per month, whatever his length of service or age. In some cases of total disability received while in actual service, the pension amounts to as much as \$72 per month.

If the pensioner was an officer he receives a higher pension than does a private, the amount depending somewhat on his rank.

The soldiers and sailors in the Spanish-American War receive an invalid or disability pension. Those who served for sixty days or more in the Mexican War of 1846-48 receive a service pension of thirty dollars a month.

If the soldier who was drawing a pension or was entitled to one has died, leaving a widow, she receives a pension during her widowhood, as do his children until they are sixteen years of age—the amount being somewhat less than the soldier himself received or was entitled to receive.

159. Department of Agriculture.—This department, formerly a bureau of the Department of the Interior, was raised to the rank of an executive department in 1889. It collects and disseminates useful knowledge relating to the state of the crops, and to agriculture in general. It conducts experiments in various crops and distributes among the people such plants and seeds of garden and farm products as these experiments show are best adapted to the soil and will be of the greatest usefulness to mankind. It endeavors by experiments to discover the best fertilizers, and the most practicable methods of preventing soil from washing and becoming impoverished, and of renewing old and exhausted soils. It also endeavors to discover effective and inexpensive cures for infectious diseases among cattle, sheep, hogs, horses, chickens, turkeys, and useful methods of exterminating pests to cotton, grapes, apples and other plant life.

It protects the national forests, and it is through it that the Government co-operates with the States in constructing and improving public or post roads.

It licenses warehouses in which are stored cotton, grain, wool and other agricultural products designed for interstate or foreign commerce, and inspects all such products and sees to it that they are correctly graded and that they are what they are represented to be.

Connected with it is the Weather Bureau, which has stations throughout the United States and in neighboring countries where meteorological observations are made and from them weather forecasts are made and published, and warnings of coming storms, cold waves, frosts and heavy snows are given.

Connected with it, also, is the pure-food department, called the Bureau of Chemistry, whose duty it is to discover if any article of food or drugs being shipped from one State to another or a foreign country has been adulterated or misbranded, and if so, to cause the shipper and dealer to be prosecuted—the purpose being to put a stop to the adulteration of foods and drugs produced in one State and sold in another, and to so labeling either as to deceive consumers.

160. The Department of Commerce was created in 1903 “to foster, promote and develop the foreign and domestic commerce, the mining, manufacturing, shipping and fisheries industries, and the transportation facilities of the United States.” It has a bureau of navigation, another of coast and geodetic survey, another of statistics, and it also has charge of taking and publishing the census. There is another bureau of manufacturing “to foster, promote and develop the various manufacturing industries of the United States, and markets for the same at home and abroad, by gathering, compiling and publishing useful information concerning such industries and such markets, and concerning corporations engaged in commerce among the States and foreign countries,

and to gather such information as will enable the President to recommend to Congress proper legislation for regulating such corporations in the interest of the whole people." It is designed to be the department of general publicity of the business affairs of the country.

160a. The Department of Labor was created March 4, 1913, "to foster, promote and develop the welfare of the wage-earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment." The Secretary of Labor has power to act as mediator and to appoint commissioners of conciliation in labor disputes whenever in his judgment the interests of industrial peace may require it to be done. It was for the purpose of fostering and promoting the welfare of all such wage-earners that the Department of Commerce and Labor was divided into two departments in 1913, one of which was to be henceforth known as the Department of Commerce, and the other as the Department of Labor. Connected with the department are bureaus which look after the enforcement of the naturalization and immigration laws; and to see to it that the country is not imposed upon by persons who seek to unworthily become citizens or residents of the United States.

160b. Growth of Departments.—It will be seen by a consideration of the dates at which the later departments have been created and the objects which they were designed to serve and conserve, that they in a way portray the growth and development of the nation and of its industrial and social life.

The Interior Department was created after the people had begun to crowd into the great West and to acquire homesteads and to settle the public lands. After the Mexican War and the Civil War were fought, the Government took up the great task, through that department, of granting bounties and pensions to old soldiers; and as civilization

pushed out onto the plains and into mountainous regions, it took up, through the same department, the beneficial work of irrigating arid lands.

As population grew more dense, successful farming became more and more a matter of national concern. Agriculture has always been one of America's chief industries, and must ever be. All wealth has its origin in things dug out of the ground. All other wealth consists in transporting the things produced in field and mine and forest, and transforming them into some sort of manufactured product. As the nation grew in strength and came more and more to appreciate the importance of agriculture, it created the Department of Agriculture in 1889, in order that the Government, in any proper way—by suggestion, by experimentation, by useful knowledge derived from those experiments, and by other methods—might aid the farmer to make his industry more profitable, and in order that mines might be more humanely and successfully operated and their great resources of coal, gas, zinc, iron, lead, fertilizers and chemicals might not be wasted.

But surplus crops and ores are not of themselves of any great value. To be of value they must be carried to consumers, and often they must be transformed by the manufacturer into useful commodities. Those things constitute commerce—the carriage of things produced in field and mine and forest, and their manufacture into useful commodities, and their sale to those who wish to buy. Commerce is, then, of great importance. It makes the labor of the farmer and miner profitable. Hence, the means of transportation—roads, railroads and ships—and the instruments and methods of manufacture, are the concern of the whole nation. All men are interested in quick, easy, cheap and safe methods of carrying the surplus products of farm and mine to the manufacturer, and in the transformation of them into articles suitable for use; which is the same as saying that the whole

nation is concerned in having good public roads, and sufficient railroad facilities, and ships to carry our surplus products to foreign countries where they are needed and can be sold at a profit, and in factories and methods of profitable manufacture. The United States have always produced more corn and cotton than they could consume, and usually more wheat and meats; on the other hand, nearly all the teas and coffees and much of the sugar which they consume, which is a very large amount, come from foreign lands. Our people have been great inventors, and have surpassed all other nations in inventing machines that multiply man's power to produce useful things. No other nation has such fine farming or factory machinery. We have become a great manufacturing people. Articles of almost every conceivable kind made in America find their way into foreign lands. We are so blessed with rich soil and rain and sunshine, with railroads and rivers and harbors, with peace and liberty, that a part of our business in the world is to help feed and clothe those peoples who have been far less fortunate. Out of all these things has grown up a great commerce, at home and abroad, and it was to promote and facilitate that commerce and to regulate, in the interests of the whole people, the corporations which carry it on; that Congress in 1903 created the Department of Commerce and Labor.

But railroads and mines and factories have passed largely into the hands of great corporations, which employ many thousands of persons. The welfare of those persons is also of great concern to the whole nation. The man who goes at early morn into mine or factory and toils till dewy eve to bring forth the things that clothe or add to the comforts of others, and the man who risks his life at all hours of the day and night in all kinds of weather to run a railroad train or a street car, is rendering a useful service to all other persons, and the happiness and prosperity of the entire public are intimately connected with his health and

home-life, and the public is vitally concerned in having just and fair treatment meted out to him, and to the many thousands of less conspicuous laborers employed in other industries. It was with the view of fostering and promoting the welfare of all such wage-earners that the Department of Commerce and Labor was divided into two departments in 1913, one of which was to be henceforth known as the Department of Commerce, and the other as the Department of Labor. Thereby the Government gave expression to the concern and interest of the entire nation in all those persons who toil for others.

Thus it will be seen that new executive departments have been added as the nation has grown and its industrial life has developed; and it will also be seen that all the new departments created in the last seventy years or more were created for the purpose of fostering the industries of the nation and promoting the welfare of the home-maker, and thereby our aspirations as a people have been expressed.

Questions on Chapter XVI.

1. How is the executive business of the Government divided? (151)
2. Name the heads of the departments? (151)
3. What do they constitute and what are they? (151)
4. Discuss the Cabinet. (151)
5. What are the principal duties of the Secretary of State? (152)
6. Discuss ambassadors, ministers and consuls. (152)
7. Recite some of the things said of the Treasury Department. (153)
8. What great governmental work is done through this department? (153)
9. Discuss sub-treasuries. (153) Mints. (153)
10. Read carefully what is said about Federal rural credits. (153a)
11. How many Federal Land Banks? (153a)
12. Discuss National Farm Loan Associations? (153a)
13. Can any one except a borrowing farmer be a stockholder or director? (153a)
14. How much capital must each bank have and how is it obtained? (153a)

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15. What size may loans be, and how long do they run? (153a)
16. What is one of the fine features of the system? (153a)
17. Can a bank loan more money than its organized capital? How does it obtain it? (153a)
18. When notes are paid what is done with the bonds? (153a)
19. Give the five steps showing how the bank obtains the money with which it makes loans. (153a)
20. What rate of interest can notes bear? (153a)
21. Are the notes and bonds taxable for any purpose? (153a)
What effect do you think that will have on the selling price of the bonds?
22. What effect will it have on the rate of interest the notes must bear? Why? (153a)
23. For what purpose can money be borrowed and by whom? (153a)
24. Who supervised the entire system? (153a)
25. What is the purpose of the board and its assistants? (153a)
26. How many directors of a bank must be borrowing farmers? (153a)
27. What are the duties of the Secretary of War? (154)
28. What sub-department is closely connected with it? (154)
29. Discuss the Department of Justice. (155)
30. What is said of the Post Office Department? (156)
31. Discuss the Navy and the rights of our citizens on the high seas. (157)
32. What is said of the Department of the Interior? (158)
33. Discuss Irrigation. (158)
34. Define a pension, and the two kinds. (158)
35. Read carefully what is further said on the subject of pensions. (158)
36. Discuss the Agricultural Department and with it (1) national forests, (2) post roads, (3) Weather Bureau, and (4) pure foods and drugs. (159)
37. For what purpose was the Department of Commerce created? (160)
38. What about the Census? (160)
39. For what purpose was the Department of Labor created? (160a)
40. Read carefully what is said concerning the growth of the departments. (160b)
41. In what does all wealth have its origin? (160b)
42. Can you find in these answers a reason for creating the Department of Agriculture? (160b)
43. What is commerce? (160b)

44. Are the means of transportation the concern of the nation? (160b)
 45. What is a part of our business in the world? Why? (160b)
 46. Can you find in all these things a reason for the Department of Commerce? (160b)
 47. Is the welfare of persons employed in factories, mines and on railroads a matter of concern to the whole nation? (160b)
How about other laborers? (160b)
 48. How have the executive departments grown? (160b)
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CHAPTER XVII.

THE JUDICIAL DEPARTMENT.

161. Necessity For.—By the judicial department of the Government is meant its courts. Courts are a necessary part of republican government. They are the civilized man's methods of settling disputes and controversies. Without them the American people would not have the liberty they now enjoy, nor be peaceable and orderly in the enforcement of law and order. Courts had existed in the colonies long before the adoption of the Constitution. But before that there had been no United States courts. There had really been no Union prior to the adoption of the Articles of Confederation, and one great weakness of the Government under those articles had been a lack of courts of its own to determine disputes in which the laws of Congress were involved. They left to the State courts the duty of enforcing those laws, and the result was a lack of harmony as to how far Congress had a right to extend them. Those courts in one State would decide that those laws were binding on the State or its people, and those of another State would decide to the contrary. Hence, the laws of Congress became of little force. There was no one court in which final authority was lodged. The framers of the Constitution, therefore, wisely determined

that the Union needed courts of its own to interpret and enforce its laws, and to settle disputes between two or more States, or between citizens of different States. The creation of United States courts by the Constitution did as much to make the Union a real government as any other of its provisions. Under the Articles of Confederation the Government really had only one department, the legislative, but the Constitution added a President and the courts, and it thereby made the United States government correspond in its main features to the State governments already existing.

No government can be dependent on another for the enforcement of its authority. Wherever the rights of any man under the laws of Congress are involved, the Government should have its own courts to determine the extent of those rights. Besides, controversies are sure to arise between citizens of different States, and possibly between States themselves, and in order that harmony may prevail in the whole Union, it is necessary that there should be courts of the General Government authorized to settle those controversies. Thus we see the necessity for United States courts.

Upon those courts is devolved the duty of applying the laws of Congress in individual cases. Congress passes laws, but it cannot enforce them. The duty of saying to what particular individuals those laws apply and just how far they apply belongs to the courts, and a court is necessary in order that before they are applied against any person he may have a full hearing before an impartial tribunal, and that means an impartial judge and an impartial jury of his fellow-citizens. It is by applying them in that way that they come to have a uniform meaning, and that the people come to understand that meaning, and how far they must obey them.

162. Where Vested.—The Constitution says that “the judicial power of the United States shall be vested in one

Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."

The **Supreme Court** consists of a Chief Justice and eight associate justices, and this number may be increased by Congress. All its sessions are held in Washington. Its jurisdiction is almost entirely appellate; that is, causes are not begun in it, but in an inferior court and taken to it by appeal. *Habeas corpus* cases, however, may originate in this court, as may, also, cases affecting ambassadors or ministers and those to which a State is a party.

The **inferior courts** are four, and all were established by Congress. They are District Courts, Courts of Appeals, the Court of Customs Appeals, and the Court of Claims. All these are different from the courts created by the State. They are sometimes called "Federal courts," while the others are designated as "State courts."

1. The **district courts** are the trial courts of the Government. It is in them that nearly all suits involving Federal rights or Federal laws are brought and tried. Each State constitutes one or more districts, and there is one district judge for each district, and in a few of the districts more than one. Each district is divided into one or more divisions, and sessions of the court are held in one or more of the principal towns in the division. For instance, in Missouri there are the Eastern District and the Western District; and in the Eastern District there are three divisions (the Eastern, Northern and Southern), and court is held in the Eastern Division at St. Louis and Rolla, in the Northern Division at Hannibal, and in the Southern Division at Cape Girardeau; and in the Western District there are five divisions, and court is held in the Western Division thereof at Kansas City and Chillicothe, in the Southwestern Division at Joplin, in the St. Joseph Division at St. Joseph, in the Central Division at Jefferson City, and in the Southern Division at Springfield. Usually two terms are held at each of these towns

each year, and the division embraces the counties closest about the towns. At each place of holding court there is a marshal or deputy marshal, and a clerk or deputy clerk, and a grand jury to indict violators of the United States laws, and a carefully selected petit jury before whom are tried both criminal and civil cases. These district courts try persons charged with violating the criminal laws passed by Congress, suits to enforce the collection of the internal revenue, cases involving interstate commerce, cases arising under the postal laws or on the high seas or involving copyrights or patents, bankruptcy cases, and suits between citizens of different States where the amount involved is more than three thousand dollars.

2. The whole country is divided into nine circuits, hence one circuit will embrace several States; thus, the Eighth Circuit embraces Missouri and twelve other States. In each circuit there is a **Circuit Court of Appeals**, composed of three judges, and in each circuit there are three or more circuit judges, and three of these, or two of them and one of the justices of the Supreme Court, or two of them and a district judge, constitute the court of appeals of that circuit. They hold court at three or four of the principal cities in the circuit; for instance, in the Eighth Circuit sessions are held at St. Louis, St. Paul and Denver or Cheyenne. They are not trial courts. They have no juries. They hear no witnesses. They are appellate courts for the review of cases tried in the district courts and appealed to them. When a case is appealed to one of them, copies of the evidence, pleadings, instructions and other record matters are sent to it and it reviews these and determines whether or not the case was properly tried.

Not all cases appealed from the district courts go to them. Suits appealed from the Supreme Court of a State, and suits involving a construction of the Constitution of the United States and a few others go directly to the Supreme

Court; but most cases are appealable only to the court of appeals, and usually its decision is final.

3. **The Court of Customs Appeals**, composed of five judges, sits at Washington and may sit in any part of the country. The tariff laws of the United States are complicated and often difficult to understand. All goods are by them divided into classes, and the amount of tariff tax an imported article must pay depends on the class to which it is assigned. There are appraisers to classify imports and to fix their value, and designate the tariff taxes they must pay. If any importer is dissatisfied with the appraisers' classification of his goods, he can appeal to this court, and its decision is final. Its only duty is to try cases involving the tariff laws, and to review, on appeal, the classification of imported goods as made by the appraisers, and determine the amount of tariff taxes they must pay.

4. **The Court of Claims**, composed of five judges, sits in Washington to pass upon claims against the United States. The Government cannot be sued, but it frequently happens that it becomes indebted to some one who has rendered it service, or to one whose property it has bought or appropriated or damaged. This court investigates such claims, and if it finds them just it so reports to Congress, which usually, but not always, makes an appropriation of money to pay them. But the Congress has the power to refuse such payment, and neither the President nor any court can compel Congress or any officer to pay any claim against the Government.

163. Checks on Congress.—The Supreme Court is a constant check on Congress. That body may pass a law which this court may nullify by declaring it to be in conflict with the Constitution, and if the President or any United States judge after that persists in enforcing it Congress may impeach him for doing so. The Constitution does not say

that the Supreme Court shall have power to declare a law unconstitutional. Its authority to do that is primarily found in the oath of its judges. The Constitution binds the judges of that Court (and all other public officers) "by an oath or affirmation to support this Constitution." Their plain duty then, when a law comes before them to be enforced, is to determine whether or not it is constitutional, and if they declare it is not, that is the end of it. The laws of Congress for a long time have directed the attention of this court to the duty of determining the constitutionality of a law of Congress or of any particular State, and for an equally long time all the people have assumed that that duty most appropriately belongs to that highest judicial body. Hence, it may be truthfully said that it is the especial duty of this court to guard the Constitution, and that whenever it fails to nullify any law that conflicts with the true meaning and purpose of the Constitution that instrument will to that extent be of no value to the people.

164. Tenure of Office.—Judges of all Federal courts are appointed by the President, by and with the advice and consent of the Senate. If the Senate refuse to confirm the President's appointment, he makes another selection. If the Senate approves his appointment, the judge holds office "during good behavior;" that is, he holds office for life, unless he voluntarily retires or is removed. For corruption or oppression in office he may be impeached by Congress and removed; and for private crimes he may be tried as any other citizen. But aside from these exceptions, he may hold office during life. If he desires, after reaching the age of seventy years he can retire, if he has served ten years, and his salary will continue until his death. It was supposed that if such a provision were made for these judges they would be independent and free to do right without fear or favor.

165. Salaries.—And the same idea led to the provision that the salary of no judge shall be diminished while he re-

mains in office. His salary may be increased, but it cannot be made less than it was at the time of his appointment. Thus the salary of the Chief Justice in 1789 was made \$4,000; in 1873, \$10,500; and in 1911, \$15,000. His salary has never been reduced. Each of the other justices of the Supreme Court receives \$14,500 per year; a circuit judge, \$7,000; a district judge, \$6,000. And in some cases the necessary traveling expenses incurred by them in attending court are paid by the Government.

166. Jurisdiction of What Causes.—Usually the Federal courts have nothing to do with disputes between citizens of the same State, nor with punishing the violations of the laws of any particular State. Before they can interfere in controversies wholly within a State it must be made to appear that some of the parties have been denied some right guaranteed by the Constitution or laws of the United States. Federal courts concern themselves almost entirely with disputes between States, and disputes between citizens of different States. They also settle controversies at sea between ship companies, passengers and shippers, and the rights of aliens and citizens under treaties. And they of course settle disputes which arise over commerce among the States, and injuries to railroad employees engaged in interstate commerce.

167. Trial by Jury.—The Constitution says that “the trial of all crimes, except in cases of impeachments, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed.” And by the Seventh Amendment it is provided that in suits at common law for money or property, where the value of the thing sued for “shall exceed twenty dollars, the right of trial by jury shall be preserved.” Thus, trial by jury in suits on contracts and for damages, and in criminal cases, is a part of the fundamental law. But trial by jury was no new thing; it had

existed in this country long before the Constitution was adopted; in fact, from the time of the first settlements, and in England long before that.

168. In Criminal Cases.—The Constitution not only says that “the trial of all crimes . . . shall be by jury,” but also that “such trial shall be held in the State where such crimes shall have been committed,” and the Sixth Amendment went further and said that “the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State or district wherein the crime shall have been committed, . . . and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.”

1. The trial is to be by a jury of the district for two reasons: First, it adds to the strength of society to require each community to say for itself whether or not it will punish a crime committed in its own midst. Responsibility for the maintenance of order sobers a people. It leads inhabitants of the community to feel that the burden of preserving order is upon them. The best way to qualify a people for self-government is to permit them to share in the government and be responsible for the enforcement of its laws and authority. In the next place, the citizens of the district are likely to be less prejudiced against the accused, and less likely to be indifferent to his rights, and hence more likely to be controlled by the principles of justice, than those of a district far away.

2. A just government will insure accused persons a speedy trial. In some countries men are thrown into a prison for small offenses and kept there without trial for years and even a lifetime. No one knows whether they are guilty or not, and as a result the people look upon the government as cruel and oppressive. A trial should not be so post-

poned as to deprive society of protection against criminals, nor yet be so hurried as to deny the accused a fair trial.

3. All trials should be **public**. If they could be conducted in secret the enemies of the accused might so manipulate things as to condemn him out of hate, and not for violating a law of the land. Besides public trials afford less opportunity to bribe judges, juries and witnesses. Unfair and corrupt practices cannot thrive in the blazing light of publicity. When the trial is public, and speedy, and the accused is condemned by an impartial jury of his own community, in the choosing of which he had something to do, justice is more likely to be done and the good of society conserved.

4. The accused has the right to be **confronted with the witnesses** against him. They meet each other face to face at the trial. He cannot be tried in his absence. If he escapes, the trial must be postponed until he is captured and brought into court. This is necessary, lest some advantage be taken of him in his absence. Depositions, or written testimony, in his behalf, may be taken elsewhere and read at the trial; but the witnesses against him must appear at the trial and testify in open court.

5. The court will also **compel witnesses in his favor**, if their testimony is shown to be material and valuable to him, to come into court and testify, whether he be able to pay their expenses or not. It would be clearly unjust to condemn any person if there are witnesses somewhere who could prove him not guilty, but whom he cannot obtain because of a lack of means. The Government does not wish to punish the innocent, and in order that it may never do so it grants to the accused "compulsory process" to compel witnesses to come into court and testify in his behalf what they actually know.

6. The accused is also entitled to a lawyer or **counsel** to assist in his defense. If he is poor and unable to employ

counsel, the court can compel members of the bar to defend him, free of cost.

- All these privileges, deemed by the framers of the Constitution necessary to a fair trial, are guaranteed to one liable to have his life or liberty taken from him by the court. The court must avoid every form of cruelty and oppression. But if, in spite of all these advantages for proving his innocence, an impartial jury of his countrymen declare him guilty as charged in the indictment, the accused must be punished in order to put a stop to crime.

169. In Civil Cases.—The Constitution as originally adopted said nothing about trial by jury in a contest for property. It seemed to be assumed that a jury would be allowed in such cases according to the custom which had long obtained among all English-speaking people. But it was soon determined to remove all doubt about the matter by an amendment to the Constitution. By Amendment Seven it was declared that "in suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law." This amendment did not create a jury trial to determine property rights; that method had long existed; it simply said that it should be "preserved;" that neither the courts nor the Congress should have power to take it away.

It is the peculiar province of the jury to determine issues of fact. If the suit is for breach of contract, they decide (1) whether or not there was a contract, (2) and if so, whether or not it has been broken, and (3) if broken, how much has been the damage. If one sues to recover damages from a railroad for negligence in breaking his arm, the jury decide (1) whether or not the railroad was negligent, (2) and if so, whether or not that negligence resulted in breaking the arm, and (3) if so, how much is the damage. All these are ques-

tions of fact, which the jury are to decide, and the law is that they must find what facts are true, and make up their verdict accordingly. Neither the judge nor the appellate court will interfere with their verdict if there was any substantial evidence to support it, and the case was tried as the law requires. But of course if there is no such evidence, or if the case was not tried according to law, the trial judge or the appellate court will not permit their verdict to stand, for that would be unjust—and this is what is meant by the words “according to the rules of the common law” used in this Seventh Amendment. They mean that juries were to have the same powers after that amendment was adopted that they had long had in the courts of the colonies and in England, and that the judge must still have the right to say what was the law by which they were to be governed. Those rules are in force now, and will be so long as that amendment remains unchanged. They have become a part of the constitution or statutes of almost every State in the Union, and hence the proceedings and practice of all courts throughout the land are very much the same. We can then see how much they have done to systematize and harmonize proceedings in all American courts.

170. Indictment by Grand Jury.—It is provided by the Fifth Amendment that “no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger.” A grand jury in most State courts is composed of twelve citizens, but in a Federal court it consists of “not less than sixteen nor more than twenty-three persons.”

1. They meet in secret session, under oath, and inquire of witnesses summoned before them whether a crime has been committed, and if so they draw up and present to the court a formal written charge called an indictment, which authorizes

the court to put the person named therein on his trial. It specifically informs him of the crime he is charged with having committed. The Sixth Amendment says that "the accused shall enjoy the right to be previously informed of the nature and cause of the accusation," and this indictment is for that specific purpose. It is placed in his hands before the day of the trial, and he cannot be tried for any other crime than the one therein charged against him. In this way the accused person is given a chance to meet and overthrow the charge, if false.

A capital crime is one punishable with death, and the words "infamous crime," as here used, mean any kind of felony, which includes all crimes punishable by death or imprisonment in the penitentiary. Before one can be convicted of such a crime in a Federal court, he must be indicted by a grand jury, and so long as the grand jury refuses to indict him he can never be placed upon trial.

2. Of course, these words from the Fifth Amendment do not mean that one arrested for crime cannot be "held" until he is first indicted. If that were the case many a criminal would escape punishment by leaving the country before the grand jury could meet to consider his case. The court meets at stated times, fixed by law, and the grand jury meets with the court, and always adjourns when or before the court adjourns. If a crime is committed before the next grand jury meets the person accused of that crime, by a complaint sworn to by some private citizen or some Government official, may be arrested and held, either by bail or in jail, until it does meet. If he can give a good bond in a sufficient amount to satisfy the court officer that it will cause him to appear at the next term of court and answer to any indictment that may be returned against him, he can, in most cases, by giving such a bond, have his liberty until the grand jury meets. If he cannot give such bond, or if he is accused of treason or atrocious murder, he is confined in jail. If

no indictment is returned against him by the grand jury when it meets, he can no longer be "held," but is given his liberty. If he is indicted he can again be admitted to bail until the day of his trial, at that term or a subsequent term, by giving a new bond, unless he is charged with some "capital" offense. And he may be indicted by the grand jury although not previously arrested or formally accused of a crime. The purpose of requiring him to give bond or of confining him in jail is to insure his presence at his trial if indicted, for he cannot be tried in his absence. His presence can be secured in most cases by the giving of a bond, whose makers obligate themselves to pay a certain sum of money if he does not appear; but it is supposed that one accused of treason or atrocious murder, for which he may if found guilty be put to death, will not appear for trial however large the bond he may give, and for that reason he is confined in jail until the time of his trial, or until the grand jury has refused to return an indictment against him. It is not denying him a "speedy trial" to hold him in that way for that length of time. The words of this amendment saying that "no person shall be held to answer" for a crime "unless on a presentation or indictment of a grand jury" simply mean that no person can be put upon trial in a Federal court until after an indictment has been returned against him by a grand jury.

3. It will be observed that according to the Fifth Amendment persons "in the land or naval forces, or in the militia, when in actual service in time of war or public danger," may be "held to answer" for an infamous crime without being previously indicted by a grand jury. This is necessary for the preservation of order in an army. "In times of war" men's passions break-loose, and if order is to be preserved in the army, the army must have the right to punish those soldiers who break its regulations and commit crimes. The Army and Navy have their own system of trials, called a court-martial, which affords a summary and speedy way of

holding in check or punishing their members who offend against their rules and regulations.

171. Twice in Jeopardy.—It is further said in the Fifth Amendment: "Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb." This means that when the accused has once been acquitted by a trial jury he can never be tried again for the same offense, however much testimony may be found against him. He may be tried again and again until the jury finally agrees upon a verdict, but when that has been done he can not be tried again except on his own motion for a new trial; if acquitted, of course he will not ask for a new trial. And if once convicted and punished for a crime he can never be tried or punished again for that crime.

172. Self-Conviction.—Another part of the Fifth Amendment is: "No person shall be compelled in any criminal case to be a witness against himself." The accused person may, if he choose, testify in his own behalf, and if he does that, the Government has the right to cross-examine him, so as to test the truthfulness of his testimony; but he cannot be produced by the prosecution as a witness and tortured into testifying against himself. He must voluntarily do so, or not at all. Any person subpoenaed before a grand jury and asked to inform them concerning a crime in which he had a part, need do nothing more to shield himself than to say to them that his testimony might tend to incriminate him, and if he has a reasonable basis for his statement they cannot compel him to testify further.

173. Due Process of Law.—The Fifth Amendment continues: "No person shall be deprived of life, liberty or property without due process of law."

Due process of law means a hearing and a proceeding according to the law of the land. It usually means trial by jury before a regularly elected or appointed judge; it means the

observance of all those rights which have been discussed in this chapter, beginning with section 167. The provision that "no person shall be deprived of life, liberty or property without due process of law," therefore, means that no person can be deprived of those things by any tribunal except a court, and then only when all his legal rights are observed at the trial. There is a similar provision in the Constitution of every State. Such provisions mean that the President, the Congress, the Governor, the General Assembly, and all private citizens and all public officials must yield obedience to the authority of the courts. They are meant to prohibit lynchings and mob violence. The people have no right to inflict punishments according to their own will. Every person in a township or a county might gather in a crowd or mass-meeting and agree that an accused person should be punished in a certain way, and might proceed to inflict that punishment, but all of them would be law-breakers and every one of them a criminal. The courts have been established for the administration of justice, and in no other way and by no other body can it be legally administered.

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CHAPTER XVIII.

MISCELLANEOUS PROVISIONS.

174. New States.—A part of section 3 of article 4 of the Constitution is: "New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress."

Twelve States took part in framing the Constitution, and ten of these had adopted it at the time George Washington was elected President. Rhode Island declined to send delegates to the Constitutional Convention, and did not adopt the Constitution for thirteen months after the first President was inaugurated in 1789. North Carolina had not adopted it at the time of his inauguration, and New York took no part in his election. But by May 29, 1790, all the thirteen original colonies had adopted the Constitution, and thereby they became subject to its authority. They had already been a part of the Union formed under the Articles of Confederation, and all they had to do, therefore, to become a part of the Government created by the new Constitution, was to ratify it.

But the words "admitted to the Union" have more than once been held to mean that Congress can prescribe the terms upon which "new States may be added to this Union." On January 19, 1791, Vermont was admitted to the Union as the first "new State." Since then thirty-four others have been admitted, and now the whole number is forty-eight, the last admitted being Arizona in 1912.

Both Kentucky and West Virginia were formed into new States from territory formerly embraced within Vir-

ginia; Kentucky, by the consent of the Virginia legislature; West Virginia, on the consent of its inhabitants. The admission of West Virginia was not strictly in keeping with the Constitution, for it was not admitted with "the consent of the legislature" of Virginia. But Virginia had seceded from the Union at that time, and the counties now constituting West Virginia did not wish to secede, and petitioned Congress to be organized into a separate State and be admitted to the Union, and that was done.

175. Public Lands.—The Constitution says that "the Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

The Government from the beginning has encouraged its citizens to buy its lands and make for themselves homes. The usual price for the best lands in a State like Missouri was \$1.25 per acre, but swamp and saline lands were sold for much less. The sale of these lands was made through the General Land Office at Washington, which issued to each purchaser a **patent**, or a written deed signed by the President guaranteeing that the Government would protect the purchaser against the claims of all other persons. A United States patent, therefore, is the best basis one can have for a title to his land. In addition to the General Land Office, there are local land offices for the various districts in which the Government has land for sale.

The unpatented lands within a State when "admitted" to the Union are retained by the United States until sold, then they become subject to the authority of the State, which prescribes rules by which they may be taxed and be sold by their owners to other persons. In several States, however, the Congress has turned over to them certain swamp lands, to be sold, and the proceeds applied to draining them; and again it has given other lands to a State in aid of a university or other schools.

The lands of the Louisiana Purchase have been disposed of by the Union as above set out, but Texas was not created out of territory belonging to the United States, but was admitted to the Union as an "independent republic," and therefore Texas has been permitted to dispose of her own public lands, and retain the money received therefor.

In States west of the Mississippi River some of the lands, instead of being sold for so much an acre, were granted to actual settlers in quantities of 160 acres at the small fee of fifteen dollars, the settler having proved an actual residence thereon of five years. These were called **homesteads**. And from the earliest times lands have been given to soldiers in payment of services performed by them in war. These were called **military bounty lands**.

176. Regulation of Territories.—The population of America has constantly moved west. All the territory settled by English-speaking people west of the Mississippi River has been settled since the Constitution was adopted. As these settlers gathered in a certain region in such numbers as to indicate that they were there to stay and that others would rapidly join them, Congress would provide a government for them, under the clause of the Constitution which says that Congress shall "make all needful rules and regulations for the territory of the United States." It began by declaring that a certain tract of the country should be organized into a Territory to be known by a certain name, and be governed by a code of laws framed by a commission of three or four men, one of whom was usually the governor appointed by the President, another a judge, also appointed by him. These laws were reported to Congress, and if acceptable to it, were made binding by it upon all the inhabitants of the Territory. This simple government sufficed for a time, but as the settlers continued to grow more numerous, the Congress would authorize them to elect delegates to a territorial legislature, to frame laws for themselves, the Congress still retaining the

right to annul any law made by this legislature. Later on it authorized the people to elect delegates to a convention to frame a constitution as a basis for the admission of the Territory into the Union. If this constitution was acceptable to Congress and provided a republican form of government, the Territory was admitted to the Union as a State. But until admitted, its governors and principal officers were appointed by the President.

177. Oath of Office.—"The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound, by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States."

1. The oath prescribed by the Constitution for the President is in these words: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect and defend the Constitution of the United States." The oath that the Chief Justice must take is this: "I do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal justice to the poor and to the rich, and that I will faithfully and impartially discharge all the duties incumbent upon me as Chief Justice, according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States; So help me God." And the oath of every justice of the Supreme Court, and of every circuit and every district judge is the same, with such variations only as must necessarily be made for a difference in the name of the judge and in the name of the court. The wording of the oath for other officers varies according to their duties, but such oath always includes a pledge to support the Constitution of the United States.

Some persons, as for instance the Friends or Quakers, on account of their religious beliefs, will not take oaths, and hence they are required to "solemnly affirm."

2. The Constitution does not permit Congress to prescribe a **religious test** for office. The Government can not interfere with any man's religion. He can not be denied office simply because he adheres to certain religious teachings, nor because he is not a member of some religious denomination. Yet, nevertheless, in almost every oath the words, "So help me God," appear. But they are not regarded as a "religious test," but simply a solemn call on God to witness the promise that the man makes.

178. Private Property for Public Use.—The last clause of the Fifth Amendment is: "Nor shall private property be taken for public use without just compensation." One of the purposes of the Government is to compel men to respect the rights of others to enjoy their property; but to do this it must itself show that it respects the rights of its citizens to their own. Hence, it cannot take the property of any citizen without paying him what it is worth. If it needs it for a public use and cannot agree with the owner upon its value, it can have disinterested competent men to appraise it, and then having paid to the owner the amount of that appraisement, it can take it, without his consent. All persons hold their property subject to the right of the Government to take it for a public use.

179. Treason.—Every government must have power, to punish those who rebel against its lawful authority. "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort." It is the highest crime with which a person may be charged, and may be punished by the most severe penalties; but that punishment cannot work "corruption of blood," which means that the crime cannot be visited upon the children of the traitor. On the contrary, the Con-

stitution says that "all persons born in the United States" are citizens, and this means that the children of a person who has been convicted of treason are as much citizens as those of the most law-abiding patriot. "No person can be convicted of treason except on the testimony of at least two witnesses to the same overt act, or on confession in open court." The Constitution nowhere says that where a person is charged with some other crime, there must be at least two witnesses to "the overt act" or he cannot be convicted, but in some States that is the rule. In most of them, however, any kind of proof which "satisfies the mind of the jury beyond a reasonable doubt of the guilt of the accused" is sufficient to convict him. Fortunately, there have been few trials for treason in America. The most noted was that of Aaron Burr, charged with trying to organize the people of the Mississippi Valley into a separate government, and in that it was held (by Chief Justice Marshall) that treason must be shown by some overt (that is, an open, public, manifest) act, and did not consist merely of treasonable intention and words.

180. Power to Enforce Its Authority.—After reciting in detail the powers given to Congress (which have been already discussed under proper heads) the Constitution says: "The Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

This is a needed provision. A government must have authority to enforce the laws which the Constitution gives its legislative body power to enact. Those laws do not enforce themselves. The Government cannot depend on the whims or good will of the citizens to enforce them. It must invest certain officers with power to execute its will, and those officers are the courts and the various executive officers.

But this clause does not give Congress unlimited powers. It does not give it power to pass any law it may deem "necessary and proper." It has power to pass any law it may deem "necessary and proper" for enforcing the powers which the Constitution has vested in it and in other departments of the Government.

But it cannot pass a law to enforce a power which has not somewhere in the Constitution been vested in the Union, and it was because it was feared that it might sometime undertake to do that that the Tenth Amendment was adopted, which says that all "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." So that when Congress desires to pass a law it deems "necessary and proper," the first inquiry is, has Congress been given by the Constitution power to pass such a law? If not, it should not be passed. But Congress itself may think it has power to pass it, and do so; then it will be for the President to decide whether or not it has such power, and if he thinks it does not, he vetoes the bill. If he signs it, it then becomes the duty of the Supreme Court, the first time it is asked to enforce it, to decide whether or not Congress was vested with power to enact it, and if it thinks not, the law becomes at once void and of no effect.

But unless a law is in conflict with the Constitution the Supreme Court will not declare it void, however improper and unnecessary the judges may consider it. The remedy then is with the people, who at the next elections may elect other Congressmen who will repeal it; but if they cannot elect a Congress that will do that, it is their duty to submit to it.

181. Republican Form of Government.—The Constitution says that "the United States shall guarantee to every State in this Union a republican form of government." Ours is a republic. Not only is the Union a republic, but each

State is a republic, and the Constitution guarantees that each State shall remain a republic. And Congress usually does this when a State is admitted to the Union. Unless the constitution which the State has framed for itself provides for a "republican form of government" the State will not be admitted, but will be continued as a Territory, and governed by such "rules and regulations" as Congress may deem "needful." For instance, suppose the State when it applies for admission has in the constitution it has made for itself declared that its chief officer shall be a king who shall have absolute power to nullify all State laws which do not please him; then Congress would deny admission to the State, and continue its territorial government, until a constitution was framed by the people of the Territory which provides for them a republican form of government.

This clause does not guarantee a republican form of government for the Territories. In fact, we have already seen that "the Congress shall have power to make all needful rules and regulations respecting the territory of the United States." The Constitution nowhere says that Congress shall guarantee a republican form of government for the Territories. On the other hand, the President has always appointed their governors, and when those territories were first created the laws provided for them were made, not by the representatives chosen by the people, but by a few commissioners appointed by the President, and the laws drafted by them were approved or revised by Congress. But it has always been the policy of the Government to make the government of a Territory as nearly republican in form as possible and to turn over to the people therein the making of their own laws as soon as society therein became orderly and American.

182. Invasion.—"The United States shall protect" each State "against invasion." If Mexico were to send an armed force into Texas, it would be the duty of the President,

without waiting for a request from the Governor of that State or from her Legislature, to send a part of the standing army there to drive out the invaders. If the army were not sufficient, his duty would be first to call upon the militia of the various States to aid the army, and next on Congress to supply him with an army of volunteers. And if one State were invaded by another the President's duty would be the same. In all cases of "invasion" of a State by an outside force, it is the duty of the President to take the first step in protecting the State against it.

183. Domestic Violence.—But that is not true in case of violence or disorders among the people within a State. The Constitution says that "the United States shall, on application of the legislature, or of the executive (when the legislature cannot be convened), protect each State against domestic violence." The duty is imposed on each State to maintain order among its own people. The President cannot interfere to put down an uprising among the people of a State against the State's authority, until the Legislature of the State or its Governor requests his aid, and that aid should not be requested until it is apparent that the State is not alone able to restore order. If the uprising is against the authority of the United States government or some of its officers, the President may interfere, although the violence is entirely within a State; but in that case, the violence is not "domestic;" that is, it is not against State authority, but against National authority. The Constitution means that the United States government and the State government are both required primarily to maintain its own authority—with the right in each to call on the other for aid whenever aid is needed.

184. The Supreme Law.—As a final section on the Civil Government of the United States, this clause from the Constitution is appropriate: "This Constitution, and the laws of the United States which shall be made in pursuance

thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges of every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."

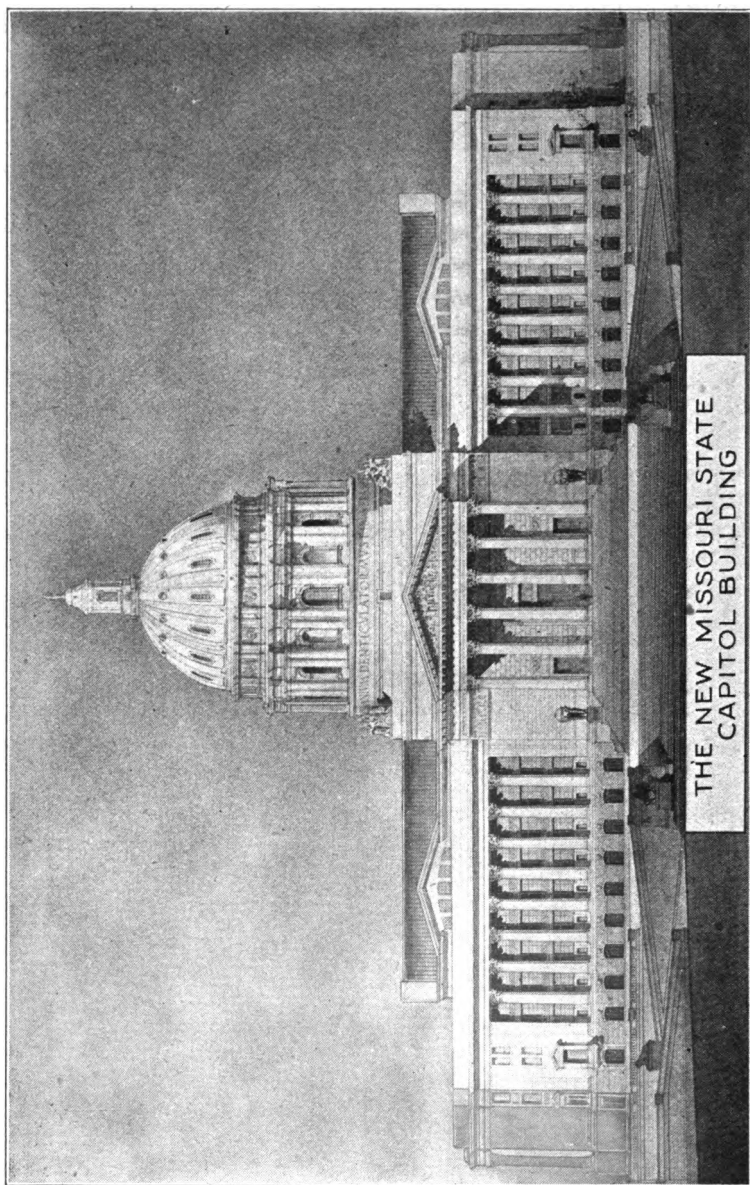
The State is bound to yield to the paramount authority of the Union. It must not only yield to the superior authority of the Constitution, but it must yield to all constitutional laws passed by Congress. It must also yield to all constitutional treaties made by the President and ratified by the Senate. The State has no choice in the matter; it must yield obedience to that superior authority whether it wants to or not. There is nothing humiliating to the States in that; they agreed to do that when they ratified the Constitution; and by keeping that agreement, each State is a joint partner in the best government in the world.

Questions on Chapter XVIII.

1. How may a new State be formed? (174)
2. How did the original thirteen States become a part of the Union? (174)
3. What was the first State admitted? (174)
4. How many have since been admitted? (174)
5. How was Kentucky admitted? (174)
6. How was West Virginia admitted? (174)
7. What does the Constitution say respecting territory? (175)
8. How has the Government disposed of the public lands? (175)
9. What does the Government issue to each purchaser? (175)
10. What is a patent? (175)
11. When a State is admitted to the Union what is done with its unpatented lands? (175)
12. Why were the lands in Texas not claimed by the United States? (175)
13. How were homestead lands disposed of? (175)
14. What are military bounty lands? (175)
15. Who provided the first government of a Territory? (176)
16. Under what authority? (176)
17. Describe the steps in Territorial government. (176)

18. How did it provide for admitting a Territory into the Union as a State? (176)
19. What officers must take an oath? (177)
20. What is the President's oath? (177)
21. What pledge must the oath of every officer contain? (177)
22. Who may affirm instead of swear? (177)
23. What is said about a religious test for office? (177)
24. What about taking private property for public use? (178)
25. What is said about treason? (179)
26. What other laws may Congress make? (180)
27. Can it pass a law to enforce a power not given to the Union? (180)
28. What clause of the Constitution prohibits it from doing that? (180)
29. When will the Supreme Court declare a law void? (180)
30. What remedy have the people then? (180)
31. What must the Union guarantee each State? (181)
32. How does Congress usually do that? (181)
33. Does this clause guarantee republican government for the Territories? (181)
34. How is each State protected against invasion? (182)
35. Who takes the initiative in case of domestic violence? (183)
36. When may the President aid in putting down an uprising against State authority? (183)
37. Suppose the uprising were against National authority? (183)
38. What is the supreme law of the land? (184)
39. Must a State yield to the authority of the Union? (184)
40. Is there anything humiliating in that? (184)

CIVIL GOVERNMENT OF MISSOURI



CIVIL GOVERNMENT OF THE STATE OF MISSOURI

CHAPTER I.

THE RISE OF THE STATE GOVERNMENT.

185. Origin.—The government of Missouri did not originate in charters from the king of England, as did those of the Colonies. Nor did it begin with small counties, which were afterwards enlarged and developed into a great State. On the contrary, it had its beginning in laws of Congress. Congress at the outset gave the people no voice in the kind of government they should have, nor did it permit them to choose representatives to make laws for them, or officers to enforce those laws. But as they became more numerous, and better acquainted with the meaning of self-government, it granted to them the right to choose representatives to make their laws, and after a few years it authorized them to form a State government and admitted the State into the Union as a full partner in the Republic, but it took care from the very first to see to it that the government that should finally be adopted by the people should be republican in form.

186. The Transfer to the United States.—By treaty made in Paris on April 30, 1803, France ceded to the United States the country then known as the Province of Louisiana, which embraced all that part of our country lying between the Mississippi River and the Rocky Mountains, except a part of Texas. Of course, what is now called Missouri was

included in the cession. By the terms of the treaty "the inhabitants of the ceded territory" were to be "incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the meantime they" were to be "maintained and protected in the free enjoyment of their liberty, property and the religion which they profess." This was their only charter of political rights. But upon the terms of this treaty they insisted during all the territorial days, and when the great national struggle arose over the Missouri Compromise, they still insisted that whatever privileges were enjoyed by the other States of right belonged to them. We shall see that for the most part Congress strictly adhered to the agreements of this treaty, and kept true faith with the inhabitants of the Louisiana territory.

On October 21, 1803, President Jefferson proclaimed the treaty ratified, and on October 31st Congress authorized him "to take possession of the territory and maintain the authority of the United States" therein. The existing government at that time was Spanish, and had been for many years, but the people were nearly all French. They had not been used to a republic. Neither they nor their ancestors had been trained in the principles of republican government. Of course, then, they were not prepared to maintain republican government in an orderly way. It was necessary to give them time to study the Constitution and the workings of the State governments along the Atlantic coast, and to learn the principles, the privileges and the responsibilities of self-government. But the Congress was careful, in providing a government for them, to see to it that no injustice was done, that no cruel or tyrannical hand was laid upon them. The act directing the President to take possession of the territory required him to "maintain and protect the inhabitants of

Louisiana in the free enjoyment of their liberty, property and religion."

187. The Successive Territorial Steps.—On March 10, 1804, the President, through Captain Amos Stoddard, of the United States Army, took formal possession of upper Louisiana, at St. Louis, and on March 26th Congress divided Louisiana into two territories, and named that part of it which lies north of the 33rd degree of latitude (the northern boundary of the present State of Louisiana) the "District of Louisiana," and over that district extended "the executive power" then vested in the Governor of the Territory of Indiana, and provided that he and the three United States judges of Indiana should establish inferior courts in that district and "make all laws for the government of the inhabitants thereof." At that time William Henry Harrison, afterwards President of the United States for a short time, was Governor of Indiana, and the few laws made by him and these three judges went into effect on October 1, 1804. They were plain laws, easily understood, and provided for trial by jury, and were in other respects much like the laws of the States along the Atlantic coast.

But the Governor of Indiana did not long exercise authority here; in fact, the arrangement by which the District of Louisiana was, for governmental purposes, attached to Indiana Territory, lasted less than a year. In March, 1805, Congress directed that "all that part of the country" which it had theretofore "called the District of Louisiana" should henceforth be known as the "Territory of Louisiana," and provided for a governor to "reside in the territory," and a secretary, and three district judges, all to be appointed by the President. The governor and the three judges were to "make laws for the government of the inhabitants," but these were to be laid before Congress, and if disapproved by it they were to be of no effect.

This was the plan until June 4, 1812, when Congress declared that "the territory heretofore called Louisiana shall hereafter be called Missouri," and that "the legislative power of the territory shall be vested in a General Assembly" to be composed of two houses, a Legislative Council and a House of Representatives. There was to be one Representative for "every five hundred free white male inhabitants," to be elected by the people. The first assembly was to meet in St. Louis, and to have thirteen Representatives, but this number was to be increased as population increased until the whole number reached 25, and thereafter there could be no larger number. The Governor (who was still to be appointed by the President) was to lay off "the territory into convenient counties," and designate a place in each where the people could vote, and appoint officers for conducting the first election, but thereafter all elections were to be regulated by the General Assembly. A Representative was required to be a land-owner, twenty-one years old, and a "white male resident of the territory for at least one year."

The Legislative Council was composed of nine members, and were chosen in an unusual way. The Representatives nominated eighteen "residents of the Territory, each possessing two hundred acres of land in his own right," and from this list the President selected nine who had to be approved by the Senate, and if the Senate rejected any name the President had to choose another from among the eighteen names on the list. The nine men thus chosen constituted the Legislative Council, and held office for five years.

But all "free white male citizens" of the Territory who were such at the time Louisiana was ceded to the Union were made eligible to hold any office, and given the right to vote. Hence, the French citizens (although not so designated) were given a preference over later English-speaking settlers, since they were not required to be land-owners in order to be eligible to office.

The law of 1812 also gave Missouri Territory a delegate in Congress, and provided for territorial courts of every grade, and vested in the Governor the power to appoint all judges thereof, and all other officers of the Territory.

This was the territorial government provided by Congress for Missouri during the territorial days. On March 6, 1820, Congress provided a plan under which "the inhabitants" of that portion of "Missouri Territory" included within the present boundaries of the State except the Platte Purchase, were authorized to "form a constitution and State government." This constitution was framed in 1820, and on August 10, 1821, Missouri, with the same boundaries it now has excepting the Platte Purchase, was admitted into the Union. The Constitution of 1820 remained in force until 1865 when it was supplanted by another, and that by another in 1875, and the one of 1875, with certain subsequent amendments, is now the fundamental law of the State government.

Questions on Chapter I.

1. How did the government of Missouri originate? (185)
2. To what nation did Missouri formerly belong? (186)
3. How was it acquired? (186)
4. What great provision was in the treaty? (186)
5. Was Congress under obligation to faithfully carry out that provision? (186)
6. Who was authorized to take possession of the territory? (186)
7. Who authorized him to do it? (186)
8. Why could not the people be permitted to form a government for themselves? (186)
9. What was the President directed to do in taking possession? (186)
10. What was the first arrangement? (187)
11. Who made the laws for the territory? (187)
12. Was Congress authorized by the United States Constitution to direct laws to be made in that way? (176)
13. What name was first given the northern part of the territory? What name was next given? And what was the third name? (187)
14. Who made laws for the territory of Missouri? (187)

15. How many Representatives, how and by whom elected, and qualifications? (187)
16. How many Councilors, how and by whom elected, and qualifications? (187)
17. Who could vote? (187)
18. What other officers did the law of 1812 give Missouri Territory, and how were they selected? (187)
19. What is said about the organization of Missouri as a State and its admission to the Union? (187)

CHAPTER II.

THE MISSOURI CONSTITUTION.

188. The Constitution.—The Constitution of Missouri is the fundamental law of the State government, just as we have seen the Constitution of the United States to be the fundamental law of the whole Union. The Constitution of a State may contain any provision that its people may wish to put into it, with one exception, and that is, it must not contain anything in conflict with the Constitution of the United States. That means, it must provide for a republican form of government for the people of the State, and it must not authorize the Legislature or other State officers to exercise any power which we have seen the Federal Constitution denied to the States or provided that Congress alone should exercise.

189. How Framed and Adopted.—The Constitution of the United States was ratified by conventions in the different States, composed of delegates chosen for that purpose by the people; the present Constitution of Missouri was framed by a convention of delegates chosen by the people for that express purpose, and then submitted to the people at the polls, who adopted it on October 30, 1875. It took effect, according to its terms, on November 30th of the same year.

190. Why Not Discussed at Length.—The Constitution of Missouri is a lengthy document. It consists of fifteen articles and a schedule, and a full discussion of the whole of it would require a large volume. To set it out in full would take seventy or eighty pages of this book. Nor is that necessary. So much of it as should be known by the average student will be explained.

191. Bill of Rights.—Thirty-two sections of the Constitution, or all of Article II, are given up to a clear declaration of the rights of a citizen, the rights of the State and the rights of the Union. This article is called the "Bill of Rights." It declares, among other things, that "all political power is vested in the people;" that "the people of this State have the inherent, sole and exclusive right to regulate the internal government thereof;" that "Missouri is a free and independent State, subject only to the Constitution of the United States;" that "the people of this State will never assent to any amendment or change of the Constitution of the United States which may in anywise impair the right of local self-government belonging to the people of this State;" that "all elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage;" that "all persons have a natural right to life, liberty, and the enjoyment of the gains of their own industry;" and "that to give security to these things is the principal office of government." Every State has a similar bill of rights. They all set forth the rights of the people, and the purposes for which government among them is established.

192. How Amended.—The Constitution prescribes two ways by which it can be amended. The first is for the Legislature, or the people by an initiative petition, to propose an amendment to a certain section, to be submitted to the voters at the next general election, and if a majority of those

voting on the proposition vote for it it becomes a part of the Constitution. This would seem to be a very easy way; in fact, too easy. It does not require a majority of all the voters voting at the election to vote for the amendment; it simply requires that there be more votes "yes" than "no." The amendment is printed on separate election ballots, and those who desire its adoption simply scratch out the word "no," and all ballots scratched in that way are counted for the amendment. But if the voter does not scratch out either the word "yes" or "no," the ballot is not counted either for or against the amendment. A majority of the voters who go to the polls and vote for candidates for office do not vote either yes or no; it is usually only those voters whose attention has been called to it and who have thereby been aroused to favor or oppose it, that vote on the proposition at all. So that it comes about that no amendment ever receives a majority of all the votes cast at the election. The result for some years was that several amendments were adopted that never would have been had all the voters taken the pains to vote "on the proposition." But in recent years this method of amending the Constitution has not proved an easy way. Between 1910 and 1914 thirty-one amendments were proposed and all of them overwhelmingly defeated. There were two reasons for this result. The first was that proposed amendments must be voted for at the general election held in November, when national, state and county officers are elected. In the campaign preceding that election the public interest is absorbed almost entirely in party policies and in electing or defeating the various candidates. There is little discussion of the proposed amendments, either by public speakers or the press. So serious a proposition as one to amend the Constitution should not be decided at a general election, when it will be overshadowed by partisan politics, but at a special election separated from contentions for office, when the minds of the people are free to consider it on its merits. The second reason

is that at those elections a large number of amendments were proposed, some of which were very obnoxious to the people, and in order to defeat them they voted "no" on all, and the result was that some very meritorious amendments, that if separately proposed would have been adopted, were defeated, along with the bad ones. The unanimity with which a large number of voters vote no on every amendment, in order to be sure of voting against some they do not like, has made it almost impossible to amend the Constitution by this seemingly easy method.

The second method of amending the Constitution is much more difficult. It consists of four steps: (1) The Legislature authorizes a vote of the people on the calling of a convention to revise or amend the Constitution. If a majority of the persons voting on the proposition vote for such convention, then the Governor fixes an election day when (2) delegates may be chosen thereto, and these delegates when they meet in convention (3) may revise the Constitution to any extent they please, and then (4) the Constitution as thus revised and amended is to be submitted to a vote of the people at an election held for that purpose and they must adopt or reject it as a whole, by a majority of the votes cast. Thus before a general change in the Constitution can be secured the proposition must come before the people at three separate elections. This is right. The fundamental law of a people should not be changed unless there is a clear necessity for it.

193. The Three Departments.—The Constitution divided "the powers of government" into three departments similar to the three departments of the government of the United States. There is an executive, a legislative and a judicial department, and each is distinct and separate from the others, "and no person, or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any power properly belonging to the others." The Governor cannot, for instance, call a grand

jury or direct what decision a court shall render, for that is a judicial matter. The Supreme Court cannot compel the Legislature to pass a law, or restrain it from passing one, for that is a legislative matter. The Legislature cannot shackle the courts so as to compel them to render a certain decision. The duties of each department are laid out in the Constitution, and government is stronger and better when each confines itself to its own work.

194. Executive Department.—The chief executive officers of Missouri are a Governor, in his absence a Lieutenant-Governor, Secretary of State, State Auditor, State Treasurer, Attorney-General and Superintendent of Public Schools. These are all provided for by the Constitution, and hence the Legislature has no power to abolish their offices. They are all elected by the people. There are other State executive officers, such as Public Service Commissioners, Superintendent of Insurance, Bank Commissioners, Labor Commissioner and Adjutant-General, but they are not mentioned in the Constitution, but have been provided for by the General Assembly, and are appointed by the Governor. There are other executive officers provided for by law for counties, cities, schools and the various institutions belonging to the State. These will be discussed elsewhere.

195. Legislative Department.—The law-making body is the General Assembly, composed of two houses, a Senate and a House of Representatives. In each city there is a minor legislative body called a municipal assembly, council, or board of aldermen, and these will be discussed under the heading of Cities, Towns and Villages.

196. Judicial Department.—The judiciary of the State consists of one Supreme Court, whose sessions are held at Jefferson City; the St. Louis Court of Appeals, the Kansas City Court of Appeals and the Springfield Court of Appeals, which are appellate courts in misdemeanor cases and in civil

suits in which the amount of money in dispute is less than \$7,500; the circuit courts, each of which has jurisdiction over one or more counties, and are the great trial courts of the State; probate courts, for the settlement of the estates of deceased persons and the care of the persons and the management of the estates of orphaned minors and insane persons; and justices of the peace for each township. There are also in certain parts of the State courts of common pleas and criminal courts.

Question on Chapter II.

1. What is the fundamental law of the state and how far is it such? (188)
2. What must it provide? (188)
3. Can the State exercise any power denied it by United States Constitution? (188)
4. How was the Missouri Constitution framed and adopted? (189)
5. Why is it not discussed at length? (190)
6. Mention some declarations of the Bill of Rights. (191)
7. What is the first way in which the Constitution may be amended? (192)
8. To be adopted must the proposed amendment receive a majority of all the votes on the proposition? (192)
9. Who usually vote on the proposition? (192)
10. Discuss at length why it has become so difficult to amend the Constitution in this way? (192).
11. What is the other method by which the Constitution may be amended? (192)
12. What three departments of government? (193)
13. Explain how they are separate and distinct. (193)
14. Who are the chief executive officers? (194)
15. Are there any others? (194)
16. What is the law-making body? (195)
17. Are there any minor legislative bodies? (195)
18. Of what courts does the judiciary of the State consist? (196)

CHAPTER III.

THE GENERAL ASSEMBLY.

197. Composed of Two Houses.—The General Assembly of the State of Missouri is usually spoken of as the Legislature, but it is not so designated in the Constitution, nor in the statutes. It is composed of two houses, the Senate and House of Representatives. And here again, as with the Congress, the Senate is sometimes referred to as the Upper House, and the House of Representatives as the Lower House. But those designations have no real significance, and are not justified by any law, or by any other fact, unless it be that the office of Senator is considered somewhat more honorable and powerful than that of Representative. The use of these terms reminds one of the old Colonial days along the Atlantic coast, when the Governor's council was styled the Upper House, and the people's representatives or the assembly were spoken of as the Lower House. That use is now chiefly of interest as an historical illustration of the fact that a law or custom may survive in the minds of the people long after it has in fact been abolished.

198. The House of Representatives is the most numerous branch of the General Assembly. Its members are chosen at the general elections in November of each even-numbered year for a term of two years beginning the following January. Each county is entitled to one Representative, and the larger counties to more than one. The method of apportionment, which is made once in ten years, is a peculiar one. First, a ratio is obtained by dividing the whole number of inhabitants in the State by 200. Then each county that has two and one-half times said ratio is entitled to two Representatives; each county having four times said ratio

is entitled to three; each county having six times said ratio is entitled to four, and so on above that number, there being one additional Representative for every two and one-half ratios. This ratio at the present time is about 16,467, so that a county must have about 41,167 inhabitants before it can have two Representatives, about 65,867 before it can have three, about 98,800 before it can have four, and for every 41,167 inhabitants above that number it can have one more Representative. This rule of apportionment will, for many years at least, give the rural communities a majority of Representatives in the General Assembly. More than half of the population of the State might be in two or three large cities, yet a majority of the Representatives would still come from that part of the State outside of such cities, because each county, however few its inhabitants, must have at least one Representative. Representation in the House is largely representation by counties, though partly in proportion to population. In New England, where towns take the place of counties, representation in the House is even more emphatically representation by towns, though partly in proportion to population. We shall see in the next section that representation in the Senate is according to population.

The General Assembly, guided by this rule of apportionment, determines the number of Representatives to which a county is entitled, and it is required by the Constitution to do that "at the first session of the General Assembly" after the taking of each decennial census. When by a law the General Assembly has said what number of Representatives a county may have, if more than one, it becomes the duty of the county court to divide the county into an equal number of legislative districts, having about the same number of inhabitants, and thereafter for the next ten years one Representative is elected from each by the voters residing therein. That is the rule for the entire State unless a county is entitled to ten or more, which means for the whole State

except St. Louis, which is classified as a county. In such a county, or that city, the circuit court divides the county into districts so as to give to each district not less than two nor more than four Representatives, and they are required to be residents of the district by which elected.

199. The Senate.—The Senate is composed of thirty-four Senators, elected by the people of their respective districts, each for a term of four years. At the first session of the Legislature after the taking of the decennial census, the State is divided into thirty-four districts "as nearly equal in population as may be" without dividing any county. These districts are numbered from 1 to 34, and on Presidential years one Senator is elected from each of those having odd numbers, and two years later one from each of those having even numbers. A county cannot be partly in one district and partly in another, but it may have more than one Senator if it has the requisite number of inhabitants. The advantage of the rule requiring one-half the Senators to be elected every two years is that at the opening of each session one-half of the Senators are experienced members.

If the Legislature fails to divide the State into senatorial districts, it becomes the duty of the Governor, Secretary of State and Attorney-General to do so within thirty days after the Legislature adjourns. When by such division, whether made by those officers or the Legislature, a county (such as St. Louis or Jackson County) is entitled to more than one Senator, it is the duty of the circuit court to divide it into as many districts as it is entitled to Senators, and then one is elected from each district by the people thereof.

The General Assembly has rarely been able to agree upon a bill dividing the State into senatorial districts. It failed to do so in 1891 and 1901, and the districts were formed by the three executive officers named above. In 1911 it again failed to do so, and the three executive officers could not agree upon the formation of districts. The Secretary of State and Attor-

ney-General did agree, rearranged the districts, and filed in the office of the Secretary of State a full statement of the districts formed by them, in the manner required by the Constitution; but the Constitution says that the formation of districts by the executive officers shall be binding and effectual "upon the proclamation of the Governor," and he refused to make such proclamation, and the Supreme Court held that without his proclamation such a formation was ineffectual, and hence the attempted division failed. The result was that the senatorial districts remained for the next ten years just as they were formed in 1901.

200. Presiding Officers.—The presiding officer of the House is the Speaker, who is chosen by the Representatives from among themselves. To preside in his absence there is a Speaker *pro tempore*, chosen in the same way. The presiding officer of the Senate is the Lieutenant-Governor, who is made such by the Constitution. To preside in his absence the Senators choose from their own number a President of the Senate *pro tempore*. The Speaker may be removed from his position by a majority of the Representatives at any time; the Lieutenant-Governor can be removed as presiding officer of the Senate only by being removed from his office as Lieutenant-Governor, that is, by impeachment. The records of the Senate are kept by a Secretary, assisted by numerous clerks, all elected or appointed by the Senate. The records of the House are kept by a Chief Clerk, who is assisted by numerous other clerks, all elected or appointed by the House. Each house elects a sergeant at arms, a doorkeeper and a chaplain.

The Speaker and Lieutenant-Governor usually appoint the committees of the respective houses. They are not given that right by the Constitution or the statutes, but it is a privilege usually accorded to them. But a majority of either house can at any time order its committees to be appointed

in some other way, and the Senate in late years has authorized the President *pro tempore* to appoint its committees.

201. Qualifications.—A Senator must be thirty, and a Representative twenty-four, years of age. A Senator must have been a qualified voter of this State for three years prior to his election, and a Representative a qualified voter for two years, and both must be male citizens of the United States; that is, either born in the United States or naturalized. A Senator must have resided in his district for one year before his election, and a Representative in his county or district for the same length of time; and each must have paid a state and county tax within the year preceding his election.

202. Compensation.—The pay of a Senator or Representative is five dollars a day for the first seventy days of an ordinary session, and one dollar per day for the remainder of such session. For revising sessions they are paid five dollars per day for one hundred and twenty days, and one dollar a day thereafter. In addition to this, each member of either house is allowed necessary traveling expenses from his home to the capital and for the return, and thirty dollars for postage and other like expenses.

The pay of a Senator or Representative is ridiculously low. It is not claimed that it is a just compensation to a worthy legislator for the public service he renders. Members of Parliament in England have never been paid any salary, and the view long prevailed in America that it was dishonorable for a legislator to receive money for making laws for his people, and that his whole pay should be such an amount as would reimburse him for his actual expenses, and that idea still persisted when our Constitution was framed in 1875. It was an idea that might have been patiently tolerated in the days when only men of much leisure and independent fortunes were members of legislative assemblies; but we have reached the time in America when all men who are fit to be legislators

and are capable of making laws for a great State are men who in some honorable way work for their living, and that being true, members of the Legislature should be paid a just compensation for their services to the State.

203. Holding Other Offices.—No Senator or Representative shall “during the term for which he shall have been elected be appointed to any office under this State or any municipality thereof.” This is one of the wholesome provisions of the Constitution. It was designed to prohibit legislators from creating new offices for themselves, and from increasing the salaries of some county or city office to which they might expect to be appointed, and also to leave them free to legislate as the public interest might require. All temptation of that kind is removed from the legislator by this provision. The Legislature may create a new office, and the legislator may resign his seat and be elected to it. But he cannot be appointed to it at any time during the time for which he was elected; that is, during two years if a Representative, or four years if a Senator. Even if he were to resign he could not be appointed to any other office under the laws of this State until the term for which he was elected had expired. He may resign and be elected by the people to any such other office, but he cannot be appointed. In this way the people have a chance to determine whether or not he used his position as legislator for his own benefit in creating a new office or in increasing the salary of one already created. Of course, he may resign and be appointed or elected to any United States office, but by resigning he does not become eligible to be appointed to any state, county or city office, either by the Governor, or by any board or by any court or by any mayor. Nor can a member of Congress, or any person holding any lucrative office of the United States or of this State, be at the same time a member of the General Assembly. The meaning of these provisions in the Constitution is that members of the Legislature are not in any wise to become entan-

gled with the duties of any other office which might interfere with their duties as legislators.

204. Oath of Office.—Every officer in this State, from the highest to the lowest, is required to take an oath of office. That prescribed by the Constitution for the members of the Legislature is in these words: "I do solemnly swear (or affirm) that I will support the Constitution of the United States and of the State of Missouri, and faithfully perform the duties of my office; and that I will not knowingly receive, directly or indirectly, any money or other valuable thing, for the performance or non-performance of any act or duty pertaining to my office, other than the compensation allowed by law." If any person elected to the office of Senator or Representative refuse to take this oath, he thereby vacates the office. The oath for other officers varies slightly from this, the variation having regard to the duties to be performed by them.

205. Sessions.—The General Assembly meets in regular session on the first Wednesday after the first day of January of each odd-numbered year, and fixes its own time for final adjournment. An extra session may be called by the Governor at any time, but such session can consider only the subjects mentioned in the Governor's call or in special messages sent in by him after it convenes. The proceedings are public, the Constitution saying that "the sessions of each house shall be held with open doors, except in cases which may require secrecy."

206. Powers of Each House.—Each House has the right to appoint its own officers, and to determine the right of any member to his seat, and to make rules for governing its proceedings. It may punish any disorderly member, and with the concurrence of two-thirds of all the members may expel a member; but no member who has once been expelled and has again been elected by the people can be again expelled for the same cause.

207. A Law, How Passed.—A bill to become a law must receive the vote of a majority of the members elected to each house and be signed by the Governor; or, if vetoed by the Governor, that is, returned to the House in which it originated without his signature and with his objections, it must then receive the votes of two-thirds of the members of each house. If the Governor does not, within ten days, approve or disapprove a bill, nor return it to the house in which it originated, it may, by a resolution passed by both houses reciting such fact, become a law anyhow. If the General Assembly has adjourned within ten days after a bill is presented to the Governor, he may, within thirty days, return it to the Secretary of State with his approval or veto; and if approved by him within that time it becomes a law; if vetoed, it does not become a law.

208. Committees and Rules.—The rules adopted by each house provide for the appointment of numerous committees. To one of these committees a bill when introduced in either house is referred, and that committee will report it back to the house with a recommendation that "it do pass," or that "it do not pass," or that "it pass with certain amendments" proposed by the committee, or that a substitute framed by the committee be passed in its stead. Then the bill is again in the house, and when it is called up there other amendments to the original bill or to the amended bill or to the proposed substitute may be made by the whole house. The next step is to pass the original bill or the amended bill or the substitute to engrossment. If it is not ordered engrossed that is the end of it; but if it is passed to engrossment it is printed, and its number placed on the calendar of bills ready for final passage, and in due course that number is reached on the call of the calendar, and the bill as engrossed put on its final passage, and then it must receive the votes of a majority of all the members of the house or fail of passage.

If it receives such a majority, it is sent to the other house, and there it is referred to the proper committee, which reports it back to that house with a recommendation that "it do pass" or that "it do not pass," or that "it pass with certain amendments" proposed by the committee, or that a substitute framed by the committee be passed in its stead. Then it is back in that house, and when it is called up there other amendments to the bill as it was received from the other house or to the committee's proposed substitute may be made or an entirely new substitute may be adopted. The next step is to pass the bill thus adopted to engrossment; if that is done, it is printed, and placed on the calendar of bills ready for final passage, and when it is reached on the calendar it is put on its final passage, and if a majority of all the members of that house vote for it, it is declared passed. If it has not been amended in any wise since it reached that house, it then goes to the Governor for his approval or veto.

If it has been amended in that house, it must then return to the house from which it came, and if that house concurs in the amendments, it goes to the Governor; if that house does not concur in the amendments, it can indefinitely postpone any further consideration of the bill, or ask for a committee of conference to meet a like committee from the other house. These committees, when they get together and agree on the points in dispute, make the same report to their respective houses, and then if their recommendations are adopted by both houses the bill with their recommendations is declared passed and goes to the Governor as before. But if those conference committees cannot agree, they so report to their respective houses; then the house refusing to concur in the amendments made by the other must recede from that action or the bill fails.

Every bill must be read on three different days in each house. It is read the first time (by its title only) on the day it is referred to a committee. It is read the second time when

it comes up for engrossment, and the third time when it is put upon its final passage. Each of these actions must be taken on different days. So the shortest time in which a bill can be passed through both houses is usually six days. Few bills ever have such an expeditious movement through the Legislature as that.

209. Journals of Yeas and Nays.—On the final passage of a bill the roll of members is called and the vote is taken by yeas and nays, and the names of members voting for and against the bill are entered on the journal, and unless a majority of all the members of the house vote yea the bill is declared lost. That journal is published in book-form after adjournment, in order that the people may definitely know how each member voted. It takes only a majority of those voting on the proposition to pass a bill to engrossment, not a majority of all members, and consequently the yeas and nays are rarely taken on the proposition to pass a bill to engrossment, but on the demand of any two members a yea-and-nay vote may be taken on any question.

210. Appropriation Bills.—The Constitution of the United States provides that "all bills for raising revenue shall originate in the House of Representatives," and that has uniformly been held to mean that bills for the appropriation of public moneys shall originate in the House, too. But the Missouri Constitution contains no such provision. It provides that "bills may originate in either house," and that means that bills for levying taxes and for the appropriation of public moneys may originate in the Senate as well as in the House. But in practice it has become the rule in the General Assembly for appropriation bills to originate in the House, but the Senate has the power to amend any such bill, just as it may any other bill.

211. Order of Appropriations.—But the Constitution fixes the order in which the Legislature must make appro-

priations. It must first provide for the payment of the interest due the Seminary Fund, the Public School Fund or other bonded debt, then for the support of the public schools, then for the cost of collecting the revenue, then for the salaries of State officers, judges, etc., then for the support of the various asylums, and last of all for the pay of its own members and for other necessary purposes. Thus, the Legislature is compelled to provide for the support of the other branches of the government before its members can have their own small salaries and the compensation of its clerks paid, and in this way they are forced to see to it that the appropriations do not outrun the revenues that will be received into the Treasury during the next two years.

212. Money, How Paid Out.—Whenever any money belonging to the State, such as taxes or fees, or from whatever source derived, is received by a county collector or any other officer, it must be paid into the State Treasury; and no money can be paid out by the State Treasurer or by the Governor or by any one else except in pursuance to appropriation bills passed by the Legislature. The General Assembly must first determine how the public moneys are to be spent. That it does through appropriation bills, and the money can be spent in no other way except as in the appropriation bills provided. But "money belonging to the State" does not usually mean the cost of collection. It usually means the net amount remaining after the expense of collecting it, such as the collector's commissions, is deducted.

213. Power of the Governor Over Appropriations.—But even then an appropriation bill is not final, for the Governor can strike from any appropriation bill containing several items any item he may object to. He must approve or reject all other bills as a whole; but to an appropriation bill containing several items he may append a statement of the items to which he objects, and then that part of the bill

fails. He cannot cut down the item; he cannot increase it; he must object to the whole item, or to none of it. Thus, a bill providing for the support of the State Normal schools and the University will contain seven items, one for each of the six Normals and one for the University. The appropriation for the Normals may, in his opinion, be about right, but he may consider that for the University too large by one-half. But he cannot reduce that item by one-half; he must object to it as a whole, or not at all. If he objects to it he transmits his objection to the Legislature, if it is in session, and it can recast the item as it sees fit, but if it is not in session, the whole item fails.

This provision of the Missouri Constitution which gives the Governor the right to object to any item of an appropriation bill containing several items is very different from the provisions of the Constitution of the United States. The President has no such power as that. He must approve any appropriation bill as a whole, or veto it as a whole. From no bill passed by Congress can he strike out an item; whatever its character, he must approve it as a whole or veto it as a whole.

214. Creating Debts.—The Constitution imposes rigid restrictions on the power of the State to contract debts. In only two instances can a State debt be now created. (1) On the occurring of an unforeseen emergency, or a casual deficiency in the State revenue, the Legislature, upon the recommendation of the Governor, can contract a debt, by bonds or otherwise, not in excess of \$250,000 for any one year, to be paid within two years after it was made. (2) On the occurring of an unforeseen emergency or a casual deficiency in the revenue, a debt in excess of \$250,000 may be created only when two-thirds of the voters voting at an election held for that purpose authorize the making of the debt and the levying of a tax sufficient to pay the debt within thirteen years.

The Capitol might burn, or there might be a violent uprising of lawless persons which could only be put down at great and unusual expense. Either of those things would be "an unforeseen emergency," and to rebuild the Capitol or to meet the expense of putting down the uprising and restoring order, the General Assembly, upon the recommendation of the Governor, might authorize debts for any one year to the amount of \$250,000. But if a debt in excess of that sum is needed, either for those purposes or any other, it cannot be made until after two-thirds of the voters at an election not only consent that it be created, but authorize a levy of taxes to pay it within thirteen years.

For no other purpose and in no other way can a State debt be legally created. At the time the present Constitution was adopted, the State had debts, in the form of bonds, made to aid the building of railroads, and for other purposes, and the General Assembly was authorized to provide for the issuing of other bonds in renewal of those bonds, and that was done. But all the debts which the State owed at the time the Constitution of 1875 was adopted, except those due the Seminary Fund and the Public School Fund, which are in the nature of permanent endowments of the State University and the public schools, have now been paid, and by an amendment to the Constitution made in 1902 only the interest due those funds is, for the present, at least, to be paid. Hence, a State debt can now be made only when an unforeseen emergency arises, or there is a casual deficiency in the revenue. As a matter of fact, only once since the adoption of the present Constitution in 1875 has any debt been authorized, and that was in 1911, when the people, by a vote of more than three to one, ratified a proposition submitted to them by the General Assembly, to issue bonds to the amount of \$3,500,000, to be sold, and the proceeds to be used in building a new capitol, the old one having burned on February 5th of that year. The law under which those bonds were issued required the

levy of a special tax sufficient to pay the interest as it becomes due and to extinguish the entire debt within thirteen years.

215. Cash Basis.—The meaning of the various provisions of the Constitution in reference to appropriations and the contracting of debts is that the State's business shall be conducted on a cash basis; that all salaries and all current expenses shall be paid as they become due. That means that appropriations should always be kept within the anticipated revenues. But the Legislature, imprudently, or because of great public need, or even recklessly, may make appropriations in excess of the amount of money that will come into the State Treasury within the next two years. If that is done, the next Legislature may make appropriations for paying the deficiencies, but it is not compelled to do so, and if it refuses the unpaid persons who have done work or incurred expense for the State have no recourse. As a matter of fact, the Legislature has rarely refused to appropriate money to pay an honest obligation arising out of the acts of a former one.

216. Class Legislation.—The present Constitution prohibits the passage of special or local laws. All laws must apply alike to all persons or subjects of the same class. The Legislature cannot grant a special charter to one of several cities of the same class; but it is required to pass laws by which all cities of the same class may organize and conduct their governments. Thus, the laws regulating the affairs of cities of the fourth class apply to all cities of that class. The laws defining the duties of the county clerk define the duties of all county clerks. The Legislature cannot say that certain named children shall be the heirs of a certain named citizen, but it can declare that the children or other persons shall be the heirs of all persons who may die in the future. It cannot vacate a certain public road, but it can by a general law prescribe the methods by which any public road may be vacated. It cannot say that a certain named railroad shall charge a fare of three cents a mile for all passengers traveling

on its trains; but it can divide all the railroads in the State into trunk lines and branch lines, and declare that the trunk roads shall not charge fares in excess of three cents a mile, and that the branch lines may charge designated higher fares. All laws must apply alike to all subjects or persons belonging to a natural class.

217. Laws on What Subjects.—The General Assembly can make laws on a great many subjects; in fact, it can enact any law which it is not by the Constitution forbidden to pass.

It could not enact a law abolishing the Supreme Court or other courts created by the Constitution, for the courts have by the Constitution been made a part of the government, just as has the General Assembly. Nor could it enact a law that abolishes the office of Governor, or other chief executive officers, for those officers have also been created by the Constitution. So the first question that every legislator must ask himself when he comes to consider a proposed bill is, Is it forbidden by the Constitution? And if the bill passes both houses, the first question the Governor must ask himself when it comes before him for approval is, Is it constitutional? If it is not, in his opinion, he must veto it, for the Governor takes the same oath as does the Senator or Representative, to "support the Constitution," and if he believes a law is forbidden by the Constitution, he is bound by his oath to veto it. And if he signs the bill, and it comes before the circuit judge or the Supreme judge, in a suit in which its constitutionality is properly assailed, he must refuse to enforce it if he believes it is clearly in conflict with the Constitution, for he, too, is bound by his oath to "support the Constitution." The next question the legislator or the Governor will ask himself is, Is it wise? Is it needed? But the judge will not ask that question. It is not for the courts to say that a law is wise or needed. That belongs to the law-making body, and to the Governor, who has a veto power. But the courts will enforce a constitutional law, however unwise or silly the judge many consider it.

And so we may say that the General Assembly may enact any law it deems wise or needed, except such as are forbidden by the Constitution. But however wise or much needed, the Supreme Court will not permit a legislative act to be enforced if it is of the opinion that it is forbidden by the Constitution.

The Legislature can enact any law not forbidden by the Constitution. But an executive officer can exercise no power except such as is specifically given him by the Constitution or the laws, and the courts will never inquire whether a law is wise or unwise. This is a marked distinction between the power of the Legislature and the power of an executive officer and the power of a court.

218. When a Law Takes Effect.—No law passed by the Legislature, except the general appropriation act, "shall take effect or go into force until ninety days after the adjournment of the session at which it was enacted," unless there is attached to it an emergency clause, and two-thirds of all the members elected to each house "otherwise direct;" in which case, the law will take effect at once or at any subsequent time that the Legislature may designate.

219. Laws and Revised Statutes.—All the laws passed at one session are published in one book called the "Laws" of that year. At the last regular session of each decade, called a revising session, all the laws of the State then in force are revised, collated and arranged under proper heads and in connected order, and published in one or more large volumes designated "Revised Statutes." The Revised Statutes of 1909 are three large volumes. They contain all the general laws passed by the Legislature at any time prior to such revision that had not been repealed. In these volumes the laws are collected into chapters and articles and sections, and the sections are numbered consecutively from the beginning to the end, just as the sections of this book are num-

bered. Each chapter is given an appropriate heading, and then the chapters are arranged in alphabetical order in each volume.

220. Impeachments.—The chief executive officers and the judges of the higher courts may be impeached for “high crimes and misdemeanors, misconduct, habits of drunkenness, or oppression in office.” An impeachment is a trial instituted in the General Assembly for the purpose of removing an important officer of the State from his office. The House must originate impeachments. It draws up the charges against the officer and sends them to the Senate, and the Senate hears the evidence and determines whether or not he is guilty of the things of which the House charges him. It takes two-thirds of the Senators present to convict, and a conviction means the removal of the officer from office and his disqualification to hold office thereafter. When the Governor is on trial the Chief Justice of the Supreme Court presides.

As a matter of fact, there has been no impeachment trial in this State since the adoption of the present Constitution—so much for the uniform upright conduct of our judges and chief executive officers. Prior to 1875 four or five circuit judges had been tried by impeachment, and one convicted and removed from office. Since that time no motion has ever been made in the House to have any officer impeached.

220a. Initiative and Referendum.—The people also have power to enact laws independently of the General Assembly. By an amendment to the Constitution adopted in 1908 the people have power to propose statutes and amendments to the Constitution, and to enact or reject the same at the polls, and also have power to compel the submission to the people, for their approval or rejection, of certain acts passed by the Legislature.

The first of these powers is called the **Initiative**. Five per cent of the legal voters in two-thirds of the Congressional

districts in the State may sign petitions asking for the enactment of a statute or an amendment to the Constitution, in which is set out the full text of the desired statute or amendment, and file them with the Secretary of State four months before the next general election, and at such election the statute or amendment is submitted to the people, to be voted on, and if it is approved by a majority of the votes cast thereon it becomes a law.

The second power is the **Referendum**. Five per cent of the legal voters in two-thirds of the Congressional districts may sign petitions asking that a certain bill passed by the Legislature be submitted to the people for their approval, and if such petitions are filed with the Secretary of State within ninety days after the Legislature adjourns, then the people vote on the bill at the next general election, and if a majority of the votes cast thereon are for it, it becomes a law, but otherwise it does not become a law. The Legislature may itself submit an act passed by it to the people, and fix the time of the election at which the act is to be voted on; and of course the Legislature can propose amendments to the Constitution. But laws on all subjects cannot be referred to the people. Those necessary for the immediate preservation of the public peace, health or safety, and appropriation bills to pay the current expenses of the State government or to maintain the State institutions or to support the public schools, cannot be referred to the people.

The purpose of this amendment was to restore to the people an expeditious method of enacting laws which the General Assembly will not enact and of nullifying an objectionable law enacted by it.

No statute has ever been proposed by initiative petition. By 1916 nine amendments to the Constitution had been proposed by that method, and all were rejected by the voters. Some of them were so unpopular that they carried down along with them others proposed by that method or by the Legis-

lature. In fact, between 1908 and 1916 thirty-four amendments, some of them very meritorious, were submitted to the voters, either by initiative petitions or by the General Assembly, and all were rejected except one—the one that authorized the Legislature to grant pensions to blind persons. In 1914 four acts which had been enacted by the General Assembly were referred to the voters by referendum petitions and all were by them made inoperative. The reasons for the defeat of these measures have been explained in Section 192.

A modified form of both the Initiative and Referendum has long been known in this State. Since 1887 the people by a properly signed petition have been able to compel the county court to submit to them a proposition to adopt the Local Option Law in their city or county; and for a longer time a dramshop license could not be granted in any county except upon a petition signed by a certain per cent of the taxpayers. The present law concerning the organization of those special road districts which are authorized to issue bonds and build permanent roads, cannot be put into force until a petition signed by at least fifty resident taxpaying voters is presented to the county court. And likewise a petition is necessary for the organization of a drainage or levee district. The principle of the Initiative is contained in all of these.

Likewise has the principle of the Referendum, in a modified form, long been a part of our law. A school district cannot issue bonds or incur a debt to build a school house, nor can a city issue bonds for any purpose, without referring the proposition to the people for their approval; and we have seen in Section 214, that, when the General Assembly wished to borrow money to build a new Capitol, it had to submit the proposition to the voters of the State. The Legislature since 1875 has had the power to frame an amendment to the Constitution, but to have any validity it had to be referred to the people and approved by them. The principle of the Referendum is embraced in all these.

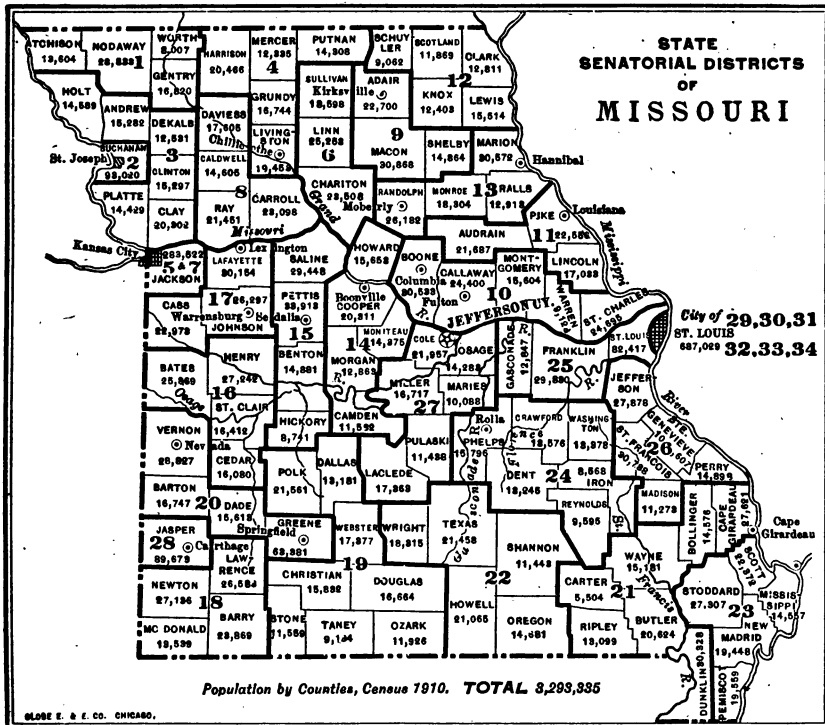
So neither the Initiative nor the Referendum is wholly new to our law. The amendment of 1908 was a long step, and whether it will add to the peace and strength, or the discord and confusion, of society, depends on the way it is used, the sense of justice of the people, and their intelligence. It attempts in a very large measure to substitute primary democracy for representative government, and in actual experience thus far almost nothing has been accomplished through it, largely because of the way it has been used; and it is likely to continue to be true that the public welfare will not be promoted but often impeded, by its employment, unless the amendment is itself amended so as to separate the elections held under it from the general elections at which candidates for office are voted for, and so as to limit to a small number the propositions that may be voted for at any one election.

Questions on Chapter III.

1. How is the General Assembly composed? (197)
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3. How and how often is the ratio obtained? (198)
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Senatorial Map.—In order that a clearer understanding may be had of the division of the State into Senatorial districts, a map is here printed showing the districts by number as made in 1901, and showing also the population of each county according to the census of 1910. These districts were not changed in 1911, nor since 1901.

CHAPTER IV.

THE EXECUTIVE DEPARTMENT.

221. General Remarks.—Executive officers of the State and Union perform like duties. Their work pertains to the same kind of duties. In each case the executive officer performs some work prescribed by law. But the executive powers of the State and Union are very differently vested. We have seen that the Constitution of the United States says that "the executive power shall be vested in the President of the United States," and names no other executive officer. All executive power of the United States government is vested in him or in other officers under his control and appointed by him or by other officers who have themselves been appointed by him. But our State Constitution says that "the executive department shall consist of a Governor, Lieutenant-Governor, Secretary of State, State Auditor, State Treasurer, Attorney-General and Superintendent of Public Schools," and elsewhere it provides that the Legislature may create other executive officers for the State, and other executive officers for the counties, others for townships and others for cities and towns, and it prescribes some of the duties of all these officers, and then directs that they shall perform these duties and such others as may from time to time be prescribed by laws passed by the Legislature.

Thus we see that the Governor does not sustain the same relation to the State that the President does to the Union. He sustains the same relation to the Legislature in his veto power that the President does to Congress; but his relation to other executive officers is very different from the President's. We also see that a State executive officer and a National executive officer are very differently related to the people. A National executive officer, from the Secretary of

State down to the humblest postmaster, is "the President's hand," over whom he has control, since he is his representative, and is often by him appointed and can by him be removed, and that power Congress cannot take from him. But the Governor has very little control over the chief executive officers of the State and almost none over those of the counties. They are rarely appointed by him, but are elected by the people, and in most cases he cannot remove them, and has no control over the way they perform their official duties unless that power is clearly given to him by law. For malfeasance in office, or official corruption, he can suspend one or two of the State officers until the charge is investigated by the Legislature or by the courts, but as a rule all executive officers except those appointed by him are not answerable to him for the way in which they perform their official duties.

222. State Officer.—A State officer is one who performs official duties for the entire State, or a large part of it. They are those named in the preceding section, all of whom are elected by the people, and certain other officers appointed by the Governor, such as Public Service Commissioners, Superintendent of Insurance, Bank Commissioner, curators of the University, regents of the Normal schools, and boards of managers of the various penal and charity institutions. All these officers in some states are appointed by the Governor, and he thereby becomes responsible to the people for their official conduct. But in this State, the chief executive officers are elected by the people, and hence they are directly responsible to the people for the way they perform their duties.

223. The Governor.—The Constitution says that "the supreme executive power shall be vested in a chief magistrate who shall be styled, 'The Governor of the State of Missouri,' " and requires that he "shall take care that the laws are faithfully executed," but it does not clearly say how he is to do

that, and there are few statutes which give him specific authority of that kind. The Constitution does make him "conservator of the peace throughout the State," which means that he is not only High Sheriff, but something more than that. He is the commander-in-chief of the militia, and if a riot occurs, or an insurrection, which cannot be put down by the sheriff, he can send the Adjutant-General with so much of the National Guard as may be necessary to restore order, and if that is not sufficient he can call out the militia, that is, the men of military age in the State, and require so many of them as may be necessary, to aid the sheriff or Adjutant-General in enforcing the authority of the courts, and in putting down mobs and riots and other lawless movements. But he has no control over the courts themselves, nor over prosecuting attorneys, nor over grand juries, nor over any other county officer except the sheriff, and then only when there is such an unusual disturbance that the sheriff cannot cope with it.

His powers may be enumerated about as follows:

1. He can direct the Attorney-General to assist any prosecuting attorney in the discharge of his duties, and therein is found his greatest authority in times of peace to see that "the laws are faithfully executed."
2. He can call out the militia "to execute the laws, suppress insurrections and repel invasions."
3. He can grant pardons, after conviction, and commute sentences to less punishment, and parole prisoners for good behavior.
4. He can call the General Assembly in extra session, and in that way, again, he can exert his influence, by message and otherwise, in securing the enactment of new laws and in inducing the Legislature to provide means for faithfully executing existing laws, but he cannot compel the Legislature to pass any bill or vote on any proposition.
5. He can veto bills passed by the Legislature, and

then they can become laws only when two-thirds of the members elected to each house vote to pass them notwithstanding his veto.

6. When a vacancy in a state or district office occurs he fills it by appointment, or if it is an office that can be filled only by an election he calls a special election, and he fills vacancies in most county offices.

7. He is vested with power to appoint a number of state officers, and he likewise appoints the election commissioners of St. Louis, Kansas City and St. Joseph, and the police commissioners of those cities, except the mayor. He appoints the governing boards of all institutions maintained by the State, such as the University, normal schools, reform schools and hospitals. And through these appointees, he can, if he desires, exert either a useful or hurtful influence on politics.

8. He appoints all notaries public, and issues commissions to all officers unless the law designates some other method for commissioning them.

9. To him the county clerks and boards of election commissioners of St. Louis make return of the number of votes cast for Presidential electors of all parties, and he casts up and counts the votes, and declares what ones have been elected, and issues to them certificates of their election.

224. Qualifications and Salary.—The Governor must be thirty-five years old and must have been a citizen of the United States for ten years and a resident of this State for seven years before his election. His term of office is four years and he cannot be elected twice in succession. He receives a salary of \$5,000 per year and lives in the Executive Mansion, provided and furnished by the State. The State pays all the current expenses of his office, and much of his household expenses.

225. Lieutenant-Governor.—The presiding officer of the Senate is the Lieutenant-Governor. He must have the

same qualifications as to age and residence as the Governor, and for his services receives a salary of \$1,000 a year, and in addition seven dollars for every day he shall actually preside in the Senate. He has no vote in the Senate except when Senators are equally divided. In case of a vacancy in the office of Governor, he becomes Governor for the residue of the term, and during the absence of the Governor from the State he also acts as Governor. He may resign or be removed by impeachment, as may the Governor, but in case of a vacancy in his office no provision is made for filling the vacancy.

The Senate elects a President *pro tempore* from its own members to preside in case of the absence, resignation or impeachment of the Lieutenant-Governor, but this officer does not succeed to the office of Lieutenant-Governor in case a vacancy occurs in that office. No one does. If the office of Governor and Lieutenant-Governor both become vacant for any reason, the President of the Senate *pro tempore* at once steps into the office of Governor and holds it until the vacancy be filled. If the office of Governor, Lieutenant-Governor and President of the Senate *pro tempore* should all become vacant, then the Speaker of the House becomes Governor, but he can in no case become Lieutenant-Governor or President of the Senate *pro tempore*.

226. Secretary of State.—The Secretary of State is the custodian of the Great Seal of the State, which is used to authenticate many of the official acts of the Governor and of the State. In his office are kept all the original laws passed by the General Assembly, the publication and distribution of which he superintends. He has authority to say what corporations shall be licensed to do business in the State, and to such as he finds have complied with the law and are undertaking to do a lawful business he issues a certificate of incorporation, licensing them to carry on that business; and he requires all corporations to make an annual report to him, showing the amount of their capital, how it is

invested, and what taxes they have paid. When authorized to do so by the Governor, he issues commissions to all officers and notaries public, and to most elective officers, entitling them to assume the duties of said offices. He keeps the records of all lands belonging to the State, and when they are sold issues to the purchaser a patent signed by the Governor. He also issues licenses to the owners of automobiles, permitting them to travel on the highways of the State, and sees to it that those owners who undertake to use their automobiles without such a license are prosecuted. In his office is kept a record of the names of all county and district officers and of the time they entered upon their official duties.

To him the county clerks and city election commissioners make returns of the number of votes cast for the various candidates for state or district offices at any general election. In the presence of the Governor he counts the votes cast for Senator and Representatives in Congress, judges of the Supreme Court, courts of appeals, and circuit courts, and State Senator, and certifies to the Governor the result of his count, and the Governor issues to each of those shown by the count to have been elected a commission, which empowers him to take charge of the office.

He also counts the votes cast for Governor, Lieutenant-Governor, Secretary of State, State Auditor, State Treasurer, Attorney-General and Superintendent of Public Schools, and sends the result of his count to the Speaker of the House immediately after its organization, and then the House and Senate in joint session correct any mistakes in the count, and declare who have been elected to those offices.

As the Legislature meets on the first Wednesday after the first day of January, and the terms of all these last named State officers do not begin until the second Monday of January after their election, the count of the votes for the first set of officers above named is made in the presence of the retiring Governor, and the count for the second set is re-

viewed by the Legislature; and thus the count in all cases is finally determined by an impartial arbiter.

To him also the county clerks and board of election commissioners of St. Louis make return of the number of votes cast in their respective counties or city for candidates for nomination at any State-wide primary election for state and district offices, and he aggregates the votes so returned to him, and decides what persons have been nominated by their respective parties, and sees to it that their names are printed on the proper party tickets to be used at the forthcoming general election.

227. State Auditor.—The State Auditor apportions to each county its share of the state taxes, and settles with each county collector for the moneys coming into his hands belonging to the State.

The law determines the rate of taxation for state purposes; that is, how many cents shall be paid on each \$100 valuation, and the valuation is determined by the county assessors, the county boards of equalization, and the State Board of Equalization, and that is done in this way: The county assessor (in some counties, the township assessors) fixes a value upon each piece of property in the county, and then the county board of equalization determines whether that value is just and fair, and changes it accordingly; and the State Board of Equalization assesses the value of railroads, street railways and telegraph companies, and adds up the valuations made in the various counties, and decreases or increases the values fixed by the county boards, so that each county may bear its just share. Then the Auditor has a basis for determining just what share of the state taxes each county shall pay, for each county must pay so many cents (say 17) on each hundred dollars of aggregate valuation of all the property therein. The county court then levies that tax against the property in the county according to its valuation, and the county (or township) collector proceeds to col-

lect it, and the money collected for state purposes is sent to the State Treasurer and a report of the amount is made to the Auditor. The law levies an inheritance tax upon the estates of persons who die without children or other descendants, and that tax is collected by the county collectors through the probate courts, and reports of the amounts are made to the Auditor.

He keeps an account of all moneys due the State from all officers and from all sources.

The Auditor also issues warrants in payment of salaries of state officers, judges of the higher courts, the officers of the 24 institutions supported by the State, and to all other persons entitled to the State's moneys. The amount to which the various officers and institutions are entitled is determined by appropriation bills passed by the Legislature, and those bills are his authority for issuing the warrants, and he cannot issue a warrant for any purpose or to any person except as the appropriation bills authorize him so to do. Nor can he issue a warrant until there is sufficient money in the State Treasury with which to pay it, duly appropriated for that specific purpose. He also issues warrants in payment of certain costs in felony cases tried in the various courts of the State, and he must take care to see that no fee or charge of this kind is paid except such as is allowed by law and approved by the trial judge.

The Auditor does not have in his custody any of the moneys of the State, but the Treasurer can pay out no money except on the Auditor's warrants, and it is the Auditor's duty to issue no warrant for the payment of money except when he is clearly authorized by law to do so.

The Auditor also appoints examiners to visit all state institutions and most county offices, and examine and audit the accounts of their officers, and require them to faithfully account for all public moneys that have come into their hands.

228. The State Treasurer is the custodian of the State funds. All moneys belonging to the State are in his keeping. He pays the salaries of state officers, of the judges of the Supreme Court, circuit courts and courts of appeals, members of the Legislature, and all the other expenses of the State on warrants drawn on him by the Auditor. He is required to give a large bond for the faithful performance of his duty. In order that the State's money may not be idle, the Treasurer deposits it, subject to be drawn out at any time by him, in banks, which pay the State a small rate of interest for its use. His term is four years and he cannot be elected twice in succession.

229. Attorney-General.—The Attorney General is the legal adviser of all other state officers. He also represents the State in all cases to which it is a party before the Supreme Court, and has the authority, in the name of the State, to begin and prosecute all suits necessary to protect the rights and interests of the State. He can by the great writ of *quo warranto* institute suits against public corporations which exercise privileges not given them by law, or in defiance of law, and if successful in those suits the courts will punish such corporations by heavy fines or by ousting them from doing business in the State. He can also by the same writ oust a state or county officer who has not been legally elected to office or has obtained the office by corrupt means.

Owing to the rapid formation in late years of trusts and combinations in restraint of trade by corporations of various kinds, his office has become one of the most powerful and important in the State, for the duty largely falls to him to set in motion the machinery of government for breaking up such unlawful combinations.

230. Superintendent of Public Schools.—The duties of this officer are indicated by his title. He is the general superintendent of the public school system. He advises county superintendents, school boards and teachers as to the

meaning of the school law, and helps them solve their financial and other problems. He apportions among the counties the interest earned by the State School Fund and the money appropriated by the General Assembly for the support of the public schools. He has authority to classify the high schools of the State, into first, second and third classes. The statute prescribes the studies to be pursued, the number of teachers and the length of term a high school must have and the number of years of high school work it must do in order to belong to one of those classes, and then he determines what high schools have measured up to those requirements, and places each in its proper class, and the law says that any student who has completed the course of study required of a school of that class shall be given full credit therefor as an entrance requirement to any other school supported by state money. The State Superintendent can examine teachers and grant them certificates authorizing them to teach in the public schools. He visits teachers' associations and advises with teachers and patrons as to the best methods and needed means for improving the all-important work of educating the masses. Either he or his deputies visit and inspect rural, city and town schools, and make suggestions concerning the methods of instruction, the government of the school and the care of the school property. He prepares an annual report showing the number of teachers and pupils in the public schools of the State, the amount of money paid for teachers and the average wages of each, the cost of buildings, and other useful information, and is otherwise required to do what he can to elevate the standard of education in the public schools.

231. Salaries and Terms.—All the state officers heretofore mentioned in this chapter are elected by the people for a term of four years, and all except the Governor and Treasurer may be re-elected as their own successors. The Secretary of State, Auditor, Treasurer and Attorney-General receive a salary of \$3,000 a year each for performing their

duties as such officers, and besides they and the Governor each receive \$5 a day for their services as members of the State Board of Equalization, which usually is in session ninety days of each year. In addition, all of them occasionally receive compensation for special services rendered the State. The Superintendent of Schools receives an annual salary of three thousand dollars, and is allowed certain traveling expenses, in visiting teachers' associations and in otherwise performing his official duties. All these officers are required to reside at the State capital, and are furnished offices by the State, and are provided with assistants paid by the State.

232. The Public Service Commission is composed of five commissioners, appointed by the Governor, each for a term of six years. They receive an annual salary of \$5,500. Its business is to compel railroads, street railways, electric light companies, gas plants, telephone and telegraph companies and other public utilities to obey the laws and operate their properties in the interest of the public and their stockholders. Within the limits of the highest and lowest rates fixed by law, it fixes the rates which railroads may charge for carrying persons or property from one point to another within the State, and requires them to furnish adequate service and safe cars, engines and other facilities. It prescribes the terms of their shipment contracts, prevents discrimination between shippers, and requires a return of overcharges. It requires railroads and street railway companies to keep a uniform system of accounts showing their receipts and expenditures, and determines the amount of stock and bonds they may issue, and other debts they may incur. It fixes the rates which private companies in any part of the State may charge for electricity, gas, water or telephones, and has power to require their facilities to be adequate and safe, and the water to be pure, and has the power to deny to any new company the right to establish a light or telephone plant or water system in any town which already has one of adequate facilities or financial

strength for supplying the public needs. It is an administrative body of extensive powers. It was designed to aid the Legislature, and to supplement the decisions of the courts, in compelling all public service corporations (1) to render honest and reasonable service to their customers and the public whom they agree to serve, and (2) to deal honestly with their stockholders. It is aided in its work by numerous public accountants, civil engineers, electricians and other experts.

233. The Insurance Department.—The Superintendent of Insurance is appointed by the Governor for a term of four years, and receives an annual salary of \$3,000. He issues licenses to, and has a general supervision over, all insurance companies permitted to do business in this State. He has authority to inspect their books to ascertain if they are doing an honest and safe business and complying with the laws, and to revoke their licenses if they are not, and it is his special duty to see to it that the insurance laws of the State are enforced. The agents or officers of any company which has not been licensed by him to do business in this State, may, if they undertake to write policies, be punished in the courts. Many of the large insurance companies are foreign companies, that is, corporations organized under the laws of other states or nations, and have no offices in the counties in which they wish to do business, and could not be sued there unless the law in some way aided the policy-holder. To meet that situation the law requires every foreign insurance company, before it is permitted to do business in this State, to agree in writing that service of summons on the Superintendent of Insurance shall be valid in any suit on a life or fire policy brought in any county in which the policy-holder resides. By this means, and because of the further fact that a foreign company must deposit with the Superintendent a large sum of money or bonds to be used, if needed, in paying its policies, a policy-holder in any county has about the same remedies against such a company as he would have were it a domestic company with

its principal office in his county. The Superintendent will also investigate a complaint that an insurance company has refused to pay a policy clearly due, and if it persists in evading and delaying compliance with its policy contracts, or in obtaining contracts by deceit and fraud, he will revoke its license to do business in this State. The Insurance Department is maintained for the purpose of protecting policy-holders, as well as to promote the welfare of honest companies.

233a. The Bank Commissioner is appointed by the Governor, for a term of four years, and is paid an annual salary of \$3,500. His duty is to see that the laws relating to banks and trust companies are faithfully observed, and that no bank does an unsafe or unauthorized business. He is assisted by eight bank examiners, and at least once each year one of them examines every bank and trust company in the State (except national banks), and requires that every excessive loan or unlawful investment be corrected. Any fact or information an examiner may learn in examining a bank he must keep secret, and he is not allowed to reveal the name of any person indebted to the bank or make known its private accounts or affairs, except in his reports to the commissioner or in court. The purpose of the office, and of these examinations and these requirements for secrecy, is to protect the interests of depositors and stockholders, to better the condition of the banks themselves, and to make sure that every bank is conducted according to safe and sound methods.

234. The Labor Commissioner is appointed by the Governor, by and with the advice and consent of the Senate, for a term of four years, at an annual salary of \$2,000. He gathers statistics concerning the wages paid laborers in mines, on railroads, and in factories, and also statistics concerning the resources and products of the State, and publishes reports containing such of these statistics as he may deem of interest to the public. He also conducts a free public employment bureau in Kansas City and St. Louis, for the pur-

pose of receiving applications of persons seeking employment, and applications of persons desirous of employing laborers, and assists laborers in obtaining employment.

234a. The Food and Drug Commissioner, appointed by the Governor, at an annual salary of \$2,000, and assisted by chemists and inspectors, is charged with the duty of enforcing the pure food laws, which prohibit any person to manufacture or sell in this State any article of impure, unhealthful, adulterated or misbranded food or drug. He has authority to require every building and place used for the manufacture or sale of any article of food to be kept scrupulously clean and healthful.

235. The State Board of Equalization.—The members of this board are the Governor, Secretary of State, Auditor, Treasurer and Attorney-General. The board meets once a year and equalizes the tax assessments of the various counties. It sometimes happens that property in one county is assessed at its real value, while in others it is assessed at much less. This is manifestly unfair. Each county should bear its proportionate share of the taxes to be raised for the support of the State government. But if the assessments made by the counties were permitted to stand some counties would thereby relieve themselves of a part of their share of this burden. To prevent this wrong the Board of Equalization raises the assessment of some counties and lowers that of others, and each county is bound by its action. Its duty in such case is to *equalize and adjust* the assessments made by the various counties, not to materially increase or decrease the aggregate amount of those assessments. The State board also has power to assess the properties of railroads, telegraph companies, and other public service corporations.

236. National Guard.—The commander-in-chief of the Missouri National Guard is the Governor, and the chief member of his staff is the Adjutant-General, who is appointed

by him, and has charge of the records and rolls. The National Guard consists of male persons between the ages of eighteen and forty-five years, who have voluntarily enlisted for any military duty that may be required of them by the Governor. Companies of the National Guard are found in various parts of the State. At proper intervals they are trained for military service. They can be called into the field by the Governor to suppress insurrection or riots or mobs too powerful to be suppressed by the local authorities.

Under the law all able-bodied males between the ages of eighteen and forty-five years are liable to military duty, and to be enlisted for military service whenever the National Guard is inadequate to enable the Governor to execute the laws, except such persons as have conscientious scruples against bearing arms, and these may be excused when summoned for duty by paying into the military fund fifteen dollars per month. Other facts pertaining to the National Guard may be found in Section 109.

237. Other State Boards.—There are various State boards to look after various interests in which the public is especially concerned. Among them are:

1. The Board of Health, whose duty it is to establish and enforce regulations to prevent the spread of infectious and contagious diseases, and for that purpose it has very extensive powers. It alone has power to license physicians and surgeons to practice medicine or surgery, and at stated times it conducts examinations to test the qualifications of persons desiring such licenses.

2. A Board of Pharmacy, which examines and licenses persons who desire to become druggists.

3. There is also a like board for examining and licensing dentists.

4. A board for the examination of barbers, by which all persons desiring to pursue the occupation of barber in

cities of 5,000 inhabitants or over must be licensed before they can do so.

5. A State Board of Charities, whose duty it is to examine into the condition and management of all prisons, jails, hospitals, reformatories, reform and industrial schools, orphanages and all public and private retreats which derive their support wholly or in part from the State or from any county or city in the State, and make a full report to the Governor showing their actual condition.

All of these boards are created either for the protection of the general health of the people, or for the benefit of those unfortunate persons whose welfare should always be of special concern to the State.

6. There is the Bureau of Mines and Mine Inspection, connected with which are mine inspectors, whose duty it is to inspect coal, lead and zinc mines employing ten miners or more, and enforce the laws requiring a sufficient amount of fresh air and proper ventilation in mines, that they be safely timbered and braced, that ores be honestly weighed, and that all reasonable precautions be taken to protect the lives and health of miners.

7. There is also a Bureau of Geology and Mines, whose special duty is to aid in the discovery and development of valuable minerals.

8. There is a State Prison Board, consisting of three members, into whose hands is committed the management of the Penitentiary, the Missouri Reformatory, the Industrial Home for Girls and the Industrial Home for Negro Girls. It also is a board of pardons and paroles, and as such hears applications for clemency from persons convicted of crime, and makes recommendations to the Governor, who is authorized, with or without such recommendations, to grant pardons or paroles upon such terms as he may see fit to impose.

9. There is a Board of Agriculture, consisting of the Governor, Superintendent of Public Schools, the dean of the

Agricultural College at Columbia, and one member from each Congressional district appointed by the Governor for a term of four years. The board appoints a practical farmer who is well versed in agricultural science as its secretary; and an assistant secretary and treasurer. It also appoints three or more lecturers to conduct farmers' institutes throughout the State, and give instruction in scientific agriculture and information as to plant foods, chemistry of the soil, dry-weather or wet-weather crops, methods of seeding and preservation of crops, and diseases of animals and methods of preventing and curing diseases. It appoints a veterinary surgeon and, with his advice, numerous deputies, to investigate the causes and cures of diseases of domestic animals, and establish quarantine against animals afflicted with contagious and infectious diseases. It appoints a dairy commissioner, to inspect public dairies, creameries, butter and cheese factories, milk depots and establish regulations for their operation, and enforce rules to be observed in the production of milk, cream or butter offered by any of them for sale to the public. It appoints an Inspector of Apiaries, or bee inspector, to aid in preventing diseases among bees and in the development of the honey industry. The board also, through its secretary, issues bulletins, containing short and easily understood instructions as to the best and most profitable methods of farming, stock-raising, and fruit-growing. It also conducts the State Fair at Sedalia, where each year exhibitions of stock, grains, fruits, ores, farming machinery and household utensils are made. Connected with the board are a dozen or more kindred or associate organizations, such as the Corn Growers' Association and the Home Makers' Conference Association.

10. There is a Board of Horticulture, to promote the science of fruit culture and to publish information which may be useful to fruit growers.

11. There is a State Poultry Association, to promote the poultry industry. It gathers information as to the best

means of caring for chickens, turkeys, ducks, geese and other domestic fowls, and publishes this information in the form of bulletins, and holds institutions of instruction in different sections of the State.

The members of all the boards so far mentioned are appointed by the Governor.

12. There is also a Board of Education, consisting of the Superintendent of Public Schools, the Governor, the Secretary of State and the Attorney-General, to direct the investment of the Public School Fund, and the distribution of the annual income of any school fund, and to look after all swamp lands belonging to the State and their sale.

13. There is also a Board of Fund Commissioners, consisting of the Governor, Auditor, Treasurer and Attorney-General, to direct the payment of the State debt and interest thereon, and the issue of new bonds or certificates of indebtedness in lieu of such bonds, when so directed by law, and to see that such certificates are safely kept.

238. Other Officers.—There are also other State Officers, appointed either by the Governor or some one of the boards mentioned in the preceding section. They are:

1. The State Geologist, whose duty it is to make surveys of mineral deposits, and publish information of the character and quantity of such mineral ores.

2. The Supervisor of Building and Loan Associations, whose duty it is, by examination and from reports made by the companies, to see that all building and loan associations in the State conduct their business in a safe way and as authorized by law.

3. A Beer Inspector, to see that beers are made of certain substances and no others, that they meet certain tests, and collect fees for such inspection, and turn them over to the State Treasurer.

4. A Game and Fish Commissioner, assisted by one or more deputies in each Congressional district, who are em-

ployed in enforcing the laws prohibiting the needless slaughter of game and fish.

5. An Inspector of Petroleum, assisted by eight or more deputies, to inspect coal oils and the products of petroleum, by whatever name known, manufactured, sold or offered for sale for illuminating, heating or power purposes within the State.

6. The Warehouse Commissioner, with numerous assistants in Kansas City, St. Louis and St. Joseph, to license public warehouses and elevators, and to inspect, weigh and grade all grain received into any of them.

The amount of fees received by the Beer Inspector for inspecting beer, and by the Secretary of State from corporations, from notaries public for their commissions and from automobile owners and drivers, and by the Superintendent of Insurance for licensing insurance companies to do business in this State, etc., amount to many hundreds of thousands of dollars each year, and add that much to the State revenue.

239. State Institutions.—There are 24 institutions supported by the State. They are of four kinds, educational, penal, eleemosynary or charitable, and agricultural.

1. The educational institutions are the State University, at Columbia; the five Normals, for the education of teachers, located at Kirksville, Warrensburg, Cape Girardeau, Springfield and Maryville; the School of Mines and Metallurgy, at Rolla; and the Normal for the education of negroes, called Lincoln Institute, located at Jefferson City.

2. The eleemosynary or charitable institutions are the School for the Deaf, at Fulton; the School for the Blind, at St. Louis; four sanitariums, or Hospitals for the Insane, located at Fulton, St. Joseph, Nevada and Farmington; the Missouri Sanitarium, at Mount Vernon, for the treatment of consumption or tuberculosis in its early stages; the Colony for the Feeble-Minded, at Marshall, where feeble-minded and harmless epileptics may receive humane care; the Con-

federate Home, at Higginsville, where infirm and dependent ex-Confederate soldiers, their wives, widows and orphans may be maintained and cared for; the Federal Soldiers' Home, at St. James, where discharged Federal soldiers, who are in indigent circumstances, or are, because of any disability, unable to support themselves, and the aged wife of any such soldier, or any army nurse in like circumstances, may be maintained and cared for; the Missouri Reformatory, at Boonville, where boys convicted of crime, as well as incorrigible boys, may be sent and taught to work and be obedient to authority; the Industrial Home for Girls, at Chillicothe, where white girls convicted of crime, or incorrigible girls, may be restrained and taught useful work and obedience; and the Home for Negro Girls, at Tipton, where incorrigible negro girls may be restrained and taught to work. The Missouri Reformatory and the Industrial Home for Girls were originally penal institutions, but the Legislature, out of a humane desire to save and reform boys and girls convicted of crime or criminally inclined, has classed them as eleemosynary.

3. The penal institution is the Penitentiary, at Jefferson City, where adult persons convicted of felonies may, according to the judgments of courts, be imprisoned for a term of years.

4. The agricultural institutions are the State Fair, at Sedalia, which gives public exhibitions of stock and agricultural products, and the Fruit Experiment Station, at Mountain Grove, for experimenting with the different kinds of fruits and ascertaining what varieties are best adapted to the soil and climate of this State, and to study the different diseases and insects which infest fruits, and to suggest remedies for their extermination.

All these institutions are governed by boards appointed by the Governor. They cost the State more than two million dollars each year. But the civilization of a people has no

higher test than the way in which they care for their unfortunates; and these institutions for the blind, the deaf, the insane, the feeble-minded, the worn-out soldiers, the wayward boys and girls, are all a standing glory to the humane purposes of our State government—almost as much so as the University, the Normal schools, and the other educational institutions, whose work in training teachers and leaders for the professions and in almost every scientific industry or undertaking is of incalculable value to a great people.

240. General Powers of Executive Officers.—All the officers and boards discussed in this chapter are a part of the executive department of the State government. Whatever power they exercise must be clearly given them by law, and whatever duties they perform are specifically prescribed by law. Their duty is to execute the will of the people as that will is expressed in laws passed by the Legislature. It is not for them to say that the laws are unwise or unneeded; the need for the laws and their wisdom are determined by the Legislature. Nor are they to act blindly or heedlessly in performing the work assigned them, for if the law is of doubtful meaning, it is for the courts to tell them what it means, and direct them how to comply with it.

241. Other Executive Officers.—But they are not all the executive officers of the State; they are the principal executive officers whose whole compensation is paid out of the State Treasury. There are other executive officers for counties, and still others for cities and towns, and their duties will be explained in other chapters, but those mentioned in this chapter perform duties for the entire State or for a considerable part of it, just as county executive officers perform duties for the whole county, and city officers for the whole or a part of the city. So we call them State officers, because, in their respective spheres, they act for the whole State.

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CHAPTER V.

THE COURTS.

242, General Statement.—The judicial department of government consists of the courts. The courts of the State are the Supreme Court, courts of appeals, circuit courts, criminal courts, probate courts, and courts of justices of the peace. The county court, being largely an administrative or executive body for transacting the business of a county, will not be considered in this chapter, but will be in the chapter on "Counties." The courts considered in this chapter have been established for the enforcement and the administration of the law.

243. Kinds of Law.—Laws are broadly divided into two classes, Criminal Law and Civil Law. Civil Law is again divided into Common Law and Statutory Law and Equity Law; and Criminal Law may consist of the Common Law or Statutes or both.

1. The **Common Law** concerns such things as ordinary promissory notes, deeds to lands, and other contracts and the breach of such contracts, and wrongs done to one's property or person. For generations in America and England certain rules have been gradually agreed upon by all men as being right for conducting business. These rules have been enforced by the courts until they have become a great system of principles, and are called the Common Law. This law is not found in the acts passed by the Legislature, but in books written by able lawyers and in the published opinions of the highest courts.

2. **Statutory Law** consists of laws passed by the Legislature and such laws are called statutes. These sometimes supplant the Common Law principles, but the Common Law, until replaced by statutes, is binding upon all men, because the Common Law, until so changed, is by our statutes declared to be in force in this State.

For the enforcement of the Common Law or the Statutory Law there are a judge and a jury, and at the trial the points to be decided are such as, Was the contract made, and what are its terms? or, Admitting the contract has been made and broken, what are the damages? But the judge alone tries a few kinds of such cases, and in other Common Law cases both sides may mutually agree to waive a jury, but if either party demands a jury it cannot be denied him.

3. But sometimes the enforcement of a contract would work a wrong. The contract may have been obtained through fraud or mistake; some kind of deceit or fraud by one party may have induced the other to enter into it, and then justice and good morals suggest that it ought to be set

aside and not enforced against the party thus cheated. It is just at this point that **Equity Law** steps in. It was created to give relief against the rigid exactions of the Common Law, when the enforcement of that law would work a wrong. Equity cases are tried by a judge alone; no jury assists him.

4. **Criminal Law** relates to crimes. It usually consists of the statutes, or laws passed by the Legislature. Crimes are divided into two classes. They are misdemeanors and felonies. A **misdemeanor** is a lower grade of crime and is punishable by fine or imprisonment in jail or calaboose. A jury and a justice or judge try a misdemeanor, although a grand jury may indict a person for a misdemeanor. A **felony** is a higher grade of crime and is punishable by imprisonment in the penitentiary, or death. Prior to 1900 no one could be tried for a felony until he had been indicted by a grand jury, but now prosecutions in a felony case may be begun on an information filed by the prosecuting attorney, or on an indictment presented by a grand jury. If begun in either way, the case is tried by a judge and a jury of twelve men.

244. Justices of the Peace.—In each municipal township of each county there is at least one justice of the peace, and often more than one. He is sometimes called a magistrate and often a squire. He is a conservator of the peace for his township. These courts have been established in order that the people may have a court right in their midst in which to settle their smaller disputes, and in which the wheels of government may be speedily set in motion in case a crime has been committed.

If a constable, sheriff or policeman sees a person committing a crime, he may arrest him on the spot, without waiting for a warrant; and then, after his arrest, a complaint is filed against him with the justice before whom is taken, and a warrant is then issued. This is the rule as to misde-

meanors. But if he has committed a felony he may be arrested before the warrant is issued, whether he was seen committing the crime or not. But that is not usually done; it is done only when his immediate arrest seems necessary to prevent his escape. Otherwise he is not arrested until after the warrant is issued, unless he is seen committing the crime.

If the prosecution is begun in the circuit court, the warrant is issued by the circuit clerk, and the arrest is made by the sheriff. But usually the warrant is issued by a justice of the peace. He can issue it only when some one files a complaint with him, under oath, charging a certain person with having committed a specific crime, and then he must issue a warrant for that person's arrest, and that complaint may be made by a private person or by the prosecuting attorney or by an officer. If the crime which the complaint charges the accused person with having committed is a misdemeanor, he may have his trial at once or in a short time by a jury before the justice. But if the crime charged against him is a felony punishable by imprisonment in the penitentiary he cannot be tried in the magistrate's court, but the justice requires him to give bond to appear for trial at the next term of the circuit or criminal court of the county, and if he cannot give bond he is committed to jail to await his trial.

If the complaint charges a felony, the justice, if the accused desires it, gives him a "preliminary examination," not for the purpose of determining his guilt, but to ascertain if there is such probability that he is guilty as requires that he be held for trial in the circuit or criminal court, and if so to fix the amount of his bond. If he is charged with first-degree murder or other capital offense, and the "proof is evident or the presumption great" that he has committed that crime, the justice will not admit him to bail, but will commit him to jail; but otherwise, he will fix the amount of his bond, by which he

and his sureties pledge themselves and their property that he will appear at the next term of court, and grant him his liberty until that time.

Civil suits involving any sum less than \$250 (in St. Louis, \$350) may be brought in a justice's court, and suits involving less than \$50 must be begun there. Suits to dispossess a tenant who will not pay his rent, and suits to dislodge a person who has wrongfully taken possession of another's house or lands (if the title is not involved), may also be brought in a magistrate's court. And prosecutions for misdemeanors may be begun either in the circuit or criminal court or the magistrate's court. But an equity case cannot be tried in a justice's court, nor can the justice alone decide any civil case unless both sides agree that he may. All cases tried in a magistrate's court may be determined by a jury of six men, who pass upon the law and the evidence as they understand them, without any instructions from the justice. The law is read to them by the lawyers who represent the different sides, and as the jury are liable to misconstrue the law where it is not plain and easily understood, only cases involving plain and simple issues are tried in magistrate courts.

The finding of the jury is called a verdict, which is expressed in a small piece of writing signed by one of their number who has by them been chosen foreman, thus: "We, the jury, find the defendant guilty of petit larceny as charged, and assess his punishment at six months' imprisonment in the county jail. John Smith, foreman;" or, "We, the jury, find for plaintiff, and assess his damages at forty dollars. John Smith, foreman."

If the case is a criminal one all the jury must agree upon the verdict; if it is a civil case, that is, a suit involving a right to property, two-thirds of the jury (or four jurors) may make a verdict. If the case is a civil one, either party dissatisfied with the verdict may appeal to the circuit court, by giving bond, and in that court the case is tried anew, just as if it had

been originally begun there. If the case is a criminal one and the verdict is in favor of the defendant, there can be no appeal, nor can he ever be tried for that crime again, for whenever a verdict of "not guilty" is reached in any case in any court which had power to try it, that is the end of it. If, however, the verdict is against the defendant, he may appeal to the circuit or criminal court of the county, and there the case is tried anew.

In all townships except those in the large cities the justice is not paid a salary, but is allowed fees which are taxed as costs, and must be paid as other costs are, usually by the losing party; and the constable and jurors are paid in the same way. In the large cities the justice's fees are taxed in the same way, but when paid are not retained by him, but paid into the county or city treasury, and he is paid a salary, which in Kansas City is two thousand dollars a year and in St. Louis is twenty-five hundred.

245. Constables.—In each township there is a constable, who is the executive officer of the court of the justice of the peace. It is his duty to make arrests on warrants issued by the justice if the accused party can be found in his county; to serve the summons on the defendant in civil cases; to impanel juries and summon witnesses for a trial; and after the trial he collects the amount of the judgment, or debt, from the losing party by seizing and publicly selling his property, if he has any property in excess of what the law says shall not be sold to pay his debts. If the case is a criminal one, and the judgment of the justice's court is that the accused be lodged in jail, it is the constable's duty to take him in charge and turn him over to the jailer. Thus, it is the duty of a constable to enforce the judgments of the justice's court, and hence he is the executive officer of that court.

246. Probate Courts.—In each county in the State there is one probate judge, whose court is concerned in settling the estates of deceased persons and appointing guard-

ians and curators to care for the persons and manage the estates of orphaned minors and lunatics. In some States this court is called the Orphan's Court.

When one dies his debts must be paid. All his property, except about four hundred dollar's worth for his widow and a part of the family furniture and one year's provisions for the support of the family and the homestead which he owned and in which he lived, is liable for the payment of his debts, and his children can have nothing until these are paid. If the person has left no will, the court appoints some one, denominated an administrator, to take charge of the estate and settle up its debts and turn the residue over to the heirs, but for this purpose no land can be sold if the personal estate is sufficient to pay the debts. If the deceased person left a will, it usually names some one that he desires to administer his estate. Such person is called an executor, and in administering the estate he must obey the instructions of the will, except that the will cannot deprive the widow of her dower or homestead, nor defeat the payment of the debts of the deceased. If a claim against the estate of a deceased person is disputed by the administrator, the probate judge may call a jury to decide the point, and from its verdict either party may appeal to the circuit court, where the case is tried again.

When the administrator or executor has fully administered the estate, that is, turned so much of it into money as is sufficient to pay the debts and paid those debts, he offers to the court an exhibit of all moneys he has received and paid out. This is called his final settlement, and if approved by the judge, he is discharged, and the estate goes to the heirs or legatees. But if the heirs are not satisfied with the conduct of the administrator they can appeal to the circuit court to redress the wrong done.

247. Circuit Courts.—The circuit courts are the great trial courts of this State. In them can be tried every kind

of case—civil, equity, and, in counties where there is not a separate criminal court, criminal cases also. One or more sessions of the circuit court are held in each county each year. These courts exercise a superintending control over criminal courts, probate courts, county courts, justices of the peace, and all other inferior courts. The State is divided into thirty-eight circuits. In each an officer, styled the circuit judge, is elected for a term of six years to preside over these courts, and in some of the circuits there is more than one judge—the number being increased by the Legislature as the amount of litigation may require. There are fourteen circuit judges in the City of St. Louis (which is rated as a county), two in St. Louis County, ten in Jackson County, three in Buchanan, two in Jasper and two in Greene. All the other circuits have only one circuit judge.

All circuit courts are also what are styled juvenile courts, which are in the nature of public guardians of "neglected and delinquent children," and by those words are meant children who are homeless, or habitually beg, or live with vicious persons or depraved parents, or associate with thieves, or visit immoral or gambling houses, or have committed a crime, or are likely because of idle and immoral habits to become criminals. The circuit judge in counties having less than fifty thousand inhabitants, and one of the circuit judges in the large cities selected by the other judges, inquires into the habits and associations of children of that character brought before him, and confines them until they are twenty-one years of age in some reform school or with some association that will teach them to work and to acquire orderly habits. In his work he is assisted by a probation officer, and the county bears the expense.

248. Criminal Courts.—In counties having over 40,000 inhabitants there may be (but usually there is not) a separate court for the trial of criminal cases. It is called a criminal court and is presided over by a criminal judge. But in most

counties such cases are tried in the circuit court. There is a criminal court in Jackson County, but in St. Louis two of the circuit judges are assigned to preside over the criminal division of the circuit court. There is also a criminal court in the Fifteenth Judicial Circuit composed of Saline and Lafayette counties. In all other parts of the State felony cases are tried in the circuit court.



The General Assembly has divided the State into thirty-eight circuits, by number, as shown by the above map.

249. Qualifications and Salary.—The circuit judge must be learned in the law, at least thirty years of age, a citizen of the United States for five years, and a qualified voter of this State for three years next before his election or

appointment. Each circuit judge receives annually from the State \$2,000 as salary. Besides, if his circuit embraces more than one county, he receives \$1,200 for traveling and other expenses. In St. Louis this salary is raised by the city to \$5,500, and in Jackson County to \$5,000, and in other large counties it varies from \$3,200 to \$4,500. If a vacancy occurs in the office the Governor appoints some one to serve until the next regular election, when the people elect a judge to fill out the unexpired part of the term.

250. Assistants.—In each county there is a circuit clerk and a sheriff, to assist the judge in holding court. And at least once a year there is a grand jury of twelve men to investigate charges and present indictments against persons they may believe guilty of crime; and there is a petit jury to hear the evidence and render verdicts in both civil and criminal cases, and a prosecuting attorney to prosecute violators of the law. The judge is also assisted by members of the bar, or licensed lawyers, who represent litigants and present to the court the causes they wish determined.

251. The Grand Jury.—The grand jury consists of twelve men and is chosen by the county court or by the sheriff, as the judge of the circuit may order, and as nearly as possible jurors are taken from each township in the county, the number taken from each depending on the number of its inhabitants as compared to that of the whole county. It is a secret body and all of its members are sworn never to divulge any of its proceedings. Nine of its members can find a "true bill." Its duty is to investigate, "without hatred, malice, fear, favor, or affection," any crime that has been committed in the county, and for this purpose it can send for witnesses in any part of the State.

Prior to the amendment of the Constitution of 1900, a grand jury was a necessary part of every regular term of a criminal or circuit court, and no person accused of a felony could be prosecuted except on an indictment found by the

grand jury, but by that amendment no grand jury can now convene except when ordered by the judge, but he is required to convene it at least once each year. And at the same time it was provided that prosecutions of felonies might be begun by an information filed by the prosecuting attorney, as well as by an indictment found by a grand jury. This amendment, therefore, renders a grand jury of less importance in the punishment of criminals, but very much increases the responsibilities of the prosecuting attorney. The enforcement of criminal laws is by it made largely dependent upon him. He can file an information against whom he pleases, prosecute or dismiss any criminal case according to his own judgment, and no one can compel him to do otherwise. This amendment has made him the most important officer in the county, and puts upon the people the duty of selecting the best man to be had for that office.

252. Petit Jury.—The petit jury is the trial jury. It consists of twelve men, who are required to be residents of the county, sober and intelligent, of good reputation, over twenty-one years of age, and able to read and write the English language. Ministers, lawyers, physicians, druggists, teachers, postmasters, officers, all persons over sixty-five years of age and many other persons engaged in special occupations are not compelled to be jurors. The jurors are chosen from a panel of impartial men. A regular panel of twenty-four men is selected for each term of the circuit court by the county court from the various townships of the county. Out of this panel a jury is chosen for the trial of most cases tried at the next term of the circuit court. If the case is a criminal one, and any of them are absent, the sheriff must fill their places from bystanders or such persons as he may quickly summon. Then they are examined for the purpose of ascertaining if they can give the accused a fair and impartial trial, and if the examination shows that any of them cannot they are excused and other men who will be substituted in

their places. Twenty-four impartial men having been obtained, a list of their names is made and from that list the prosecuting attorney strikes off four and the defendant eight, thus leaving twelve as the trial jury. If the case is a civil action, eighteen impartial men are chosen from the panel of twenty-four, a list of their names is made, and each side strikes off three. In this way the trial jury of twelve men is selected for the trial of civil cases and most criminal cases in all parts of the State, except in those counties having more than sixty thousand inhabitants.

If the case is a criminal one, and the accused is charged with first degree murder or other crime punishable by imprisonment for life, the panel will consist of forty-seven men in counties having one hundred thousand inhabitants, and of forty in counties having a less population. The county court has nothing to do with selecting that panel, but it is summoned by the sheriff upon an order by the trial judge. He orders the sheriff to summon fifty or sixty or seventy men—such a number as he deems sufficient to get a full panel from. The men thus summoned are called the *venire* (pronounced ve-ni-re, a Latin word meaning, to come). From them the panel is chosen, and from the panel the jury to try the case is chosen. If the panel consists of forty-seven men the prosecuting attorney strikes off the names of fifteen from the list and the defendant twenty; if the panel consists of forty men, the prosecuting attorney strikes off eight names, and the defendant twenty—thus, in either case the names of twelve men remain, and they constitute the trial jury.

In the City of St. Louis the panel is selected by a jury commissioner, and in Jackson, Buchanan, Jasper and St. Louis counties the judges of the circuit and criminal courts constitute a jury commission and they select the panel. In these counties there will be more than one panel of jurors, because two or more judges will be holding court at the same

time. In them a list of all persons in the city or county qualified to be jurors, except those exempted or excused by the law from jury service, is made about once in two years, and then all the names on the list are written on separate pieces of paper of uniform size and color, one on each card, and all the cards are placed in a wheel or box and thoroughly mixed, and then an officer, in the presence of the commissioners and without looking at the cards, draws out such a number as the judges have ordered, which will probably be fifty, and possibly a hundred or more, and a list is made of the names on the cards so drawn, and a summons issued to each man whose name is on the list to appear at court for at least one week's service as a juror. When a case is ready for trial, a panel, of twenty-four if a criminal case, and of eighteen if a civil case, is made up from the first names on the list. The members of the panel are examined for the purpose of ascertaining if they are qualified to sit as jurors in the case—that is, they are asked if they have talked with the witnesses in the case, if they are related to the plaintiff or defendant, if they know any reason why they cannot give each side a fair trial and a true verdict render, if in making their verdict they will be guided by the testimony of the witnesses and the written instructions of the judge, and numerous other questions touching their ability to give each side a fair and impartial trial—and if any of them are found to be disqualified, or are entitled to be excused on account of sickness or for some other valid reason, other men whose names are next on the list are substituted, and they in turn are examined, and thus the matter of selecting a jury proceeds until a full panel of impartial jurors is obtained, and then from the panel of twenty-four the prosecuting attorney strikes off the names of four and the defendant the names of eight, and from a panel of eighteen, each side strikes off three names, leaving, in either case, the names of twelve persons, who constitute the trial jury. When a case is called in another division of the court, a panel is made

up in the same way, beginning with the names of those men on the list who have not already been impaneled for jury service in some other case.

252a. Challenging the Jury.—Jury challenges are of two kinds—a challenge for cause and a peremptory challenge. A person who is closely related to plaintiff or defendant, or has already formed or expressed an opinion as to the merits of the case and is unwilling or unable to set that opinion aside and make up his verdict according to the evidence produced at the trial, or knows such facts as would make him a witness, is by the law disqualified to be a juror; and if in the examination of the panel it is shown that any member of it is disqualified for these or other valid reasons, either side can challenge him for cause, assigning the reason as the ground of the challenge, and if the judge believes the cause exists he will require him to stand aside, and another person will be substituted in his stead; but if the judge finds the cause does not exist, he retains him on the panel. A challenge for cause, then, is based on a disqualification that the law makes.

A peremptory challenge is the right which the law gives each side to strike a certain number of names from the panel or list of men whom the judge, after the examinations, has found to be qualified to sit as jurors in the case. In a civil case each side is entitled to three peremptory challenges; in a criminal case the defendant is entitled to more peremptory challenges than the State—usually about twice as many. The attorney for neither side is required to give a reason for his peremptory challenges; it is a right which the law gives. There may be reasons why a member of the panel will not render an impartial verdict, which his examination has not revealed. He may hate the plaintiff or defendant, and yet deny that he does; he may be a man of narrow and unfair mind; he may be known by one of the parties, or his attorney, to be personally dishonest. Neither side should be required to charge him to be

such a man, so long as there are numerous men in the county who are fair, capable and impartial. So each side is given the right to strike from the panel, without giving any reason therefor, such a number of names as the lawmaker deems necessary to insure a thoroughly fair jury.

252b. Number That May Make Verdict.—Formerly it was necessary for all the jury to agree to the verdict in any kind of case; now, if three-fourths of them agree upon a verdict in a civil case tried in the circuit court, and two-thirds agree upon a verdict in a civil case tried before a justice of the peace, that verdict is as binding as if every juror had agreed to it. But in criminal cases, it is still necessary that every member of the jury agree to the verdict; in such case, it must be the unanimous verdict of all. If the verdict is that the defendant is "not guilty" that is the end of the case; it cannot be appealed, nor can the defendant ever again be put on trial for the same offense.

253. Trial By Jury.—"Trial by a jury of one's peers" has been the pride of the English-speaking race for seven hundred years; and its hold upon the people, as the fairest and best method of administering the law, has strengthened with the centuries. One of its chief merits is that it puts upon the people of the community the duty and responsibility for settling disputes and punishing crime. Jury verdicts sometimes indicate a low moral sense in the community, and are a disappointment to lovers of good order and fairness, but that is true of every other system of jurisprudence ever devised. The remedy in such cases is for the public to hold in scorn the juror who has failed to do his sworn duty, and to use the slow process of education in elevating the moral sense of the people until they are fixed in their determination that jurors must always be just, fair, honest, and brave to do the right.

254. A Civil Trial.—A trial, as defined in the statute, "is the judicial examination of the issues between the parties,

whether they be issues of law or of fact." That is a correct definition, but it is not for us an easy one. It will be better understood if it is remembered that the "issues" are the points in dispute, and that the points about which the parties disagree may be the facts or they may be the law, and that a "judicial examination" means a hearing before a judge, or a judge and jury, by whom the points in dispute are to be decided. The party bringing the suit is styled the plaintiff, and the party against whom it is brought the defendant. The first step in a civil case is the filing with the circuit clerk of a paper called the petition, which sets forth the plaintiff's claim or cause of action. Then the clerk issues a summons to the defendant to come into court and make defense. A copy of this summons is delivered to the defendant by the sheriff. He appears by his attorney and files a paper of his own, called an answer to plaintiff's petition. Then a jury is impaneled, if it is purely a law case and either party demands a jury. The plaintiff first introduces witnesses to support his claim and then the defendant witnesses to uphold his side. Then the judge instructs the jury as to what is the law governing the points in dispute, the lawyers make arguments for their respective clients, the jury retire and make up their verdict, and this is formally entered in the records of the court, and is made the basis of the **judgment**, which is the final determination of the rights of the parties to the action. After this is entered on the records of the court, an **execution**, or written order, is issued, directed to the sheriff, commanding him to find, if possible, enough of the property of the losing party to pay the judgment. The sheriff seizes such property, if it is such as can be seized for debt, sells it at public auction, and turns the proceeds over to the party who was successful at the trial. If it is an equity cause the proceedings are exactly the same, except the cause is submitted to the judge alone, instead of to the jury.

255. A Criminal Trial.—In a criminal case the plaintiff is the State and its lawyer is the prosecuting attorney, or, in St. Louis, the circuit attorney. The first paper filed in such a case is an indictment presented by the grand jury, or an information filed by the prosecuting or circuit attorney. When either is filed, the clerk issues a summons to the sheriff to arrest the accused, unless he has previously been arrested. If this is, or has been done, the prisoner is brought into court, a jury sworn to try the cause, the indictment read, witnesses are introduced by the prosecuting attorney to show that the indictment is true, and by the defendant's attorney to show that it is not true; the court instructs the jury, the lawyers make their arguments, and the jury retire and either find the defendant "not guilty" or "guilty" and assess his punishment. If the verdict is "guilty" he is sentenced by the judge, and the sheriff takes him in custody and sees that the sentence of the court is carried out.

In the United States courts the jury do not fix the punishments of persons they find guilty of crimes, but that is done by the judge. In the State courts, the jury are required, by their verdict, to assess the punishment in all cases submitted to them, but if they find the defendant guilty and fail to agree upon the punishment the judge fixes it. In no case can they assess the punishment at death, but for murder in the first or second degree, treason, robbing a railroad train and one other crime they may fix it at life imprisonment.

256. Instructions to the jury in State courts are always written. In criminal cases tried in the United States courts they are given to them by the judge in an oral charge. In either case, they embrace the law by which the jury are to be guided in making up their verdict. It is the province of the judge to tell the jury what is the law applicable to the case, and every juror must take an oath before he is permitted to become a juror that he will decide the case according to the law as thus declared to him in the instructions. He

cannot be true to his oath and do otherwise. The court tells the jury that, if they find from the evidence certain facts to exist, their verdict must be for plaintiff; and if they find from the evidence certain other facts to be true, their verdict must be for defendant. In so charging the jury the court necessarily tells them what is the law by which they are to be guided. This is the rule in all cases tried in the circuit or criminal courts; but in the courts of justices of the peace there are no instructions, and the jury there must ascertain for themselves what is the law applicable to the case, and this is usually read to them from law books.

257. Appeals.—The decision reached in a trial court is called a judgment. That judgment, if not appealed from, is binding on the whole world and can never be set aside unless fraud was committed in the very act of procuring it. It is the end of the suit. But cases tried in the circuit court or criminal court may be appealed. If the case involves a misdemeanor or an amount of money less than \$7,500, the appeal is to some one of the court of appeals. If the case involves a felony, or title to land, or an amount of money larger than \$7,500, or a construction of the Constitution or of the revenue laws, or title to office, or if a county is a party to the suit, the appeal is to the Supreme Court.

258. The Court of Appeals.—These are the St. Louis Court of Appeals, the Kansas City Court of Appeals, and the Springfield Court of Appeals. In the early history of the State the only appellate court was the Supreme Court. But as the population and industries greatly increased so many cases were appealed to the Supreme Court that its work became more than it could perform. These courts, therefore, were established to finally decide less important cases on appeal. Each has three judges who hold office for a term of twelve years. Each judge receives a salary of \$6,000 per year. The three courts together embrace the whole State. Decisions

by them must conform to prior decisions on the same subject by the Supreme Court.

259. The Supreme Court.—This is the highest State court in Missouri. It is composed of seven judges, each of whom is elected for ten years, and each receives an annual compensation of \$7,500. For the purpose of convenience and more expeditious work, the court is divided into two divisions, Division One and Division Two. Division One has four judges, and considers only civil cases; Division Two has three judges and reviews all kinds of cases, but especially criminal cases. If the judges of either division disagree, the case may be sent to the Court in Banc, which consists of all the judges. The Supreme Court exercises a general superintending control over all the other courts of the State. It is assisted by four commissioners, who are appointed by and receive the same salaries as the judges.

260. Appellate Practice.—The courts mentioned in the last two sections are appellate courts; they are not trial courts at all. They have no juries and they hear no witnesses. They will not interfere with the province of a jury; but their duty is to decide whether or not the case was properly submitted to the jury, or whether or not it should have been submitted to a jury at all. When a case is taken to one of them by appeal, a copy of the petition, answer, evidence, instructions, verdict and judgment is laid before it, and it reviews them, and if it finds that the case has been properly tried it affirms the judgment, and then that judgment is final and binding on every one, or if it finds that error has been committed it points out that error and remands the cause to be tried again according to its directions, or if it finds the case has no merit and ought never to have been brought it reverses the judgment and dismisses the case, and that, too, is the end of it.

262. Duty of Court With Respect to Laws.—The courts cannot make laws; it is not for them to say what the

law should be. That is the duty of legislative bodies. However, wrong the conduct of the accused may be, the courts will not permit him to be punished unless that conduct is in clear violation of some valid law enacted by the legislative body. Nor will the courts permit him to be punished if the law is one which the legislative body had no power to enact. For instance, if a city council should authorize the mayor to try persons for murder the courts would not permit the mayor to try a murder case, for the city council, so long as our present Constitution remains unchanged, has not been given the power to confer such authority upon the mayor. The courts in this way are a great check on city councils and the General Assembly. They cause them to confine themselves to their own legitimate work. They cause them to be cautious lest they heedlessly enact high-handed laws. And by refusing to make laws themselves they force upon legislative bodies the duty of assuming their own responsibility of making laws for repressing public wrong.

It is the duty of the courts to say what the law is; not what it ought to be. And it is their duty to enforce the law in individual cases, and that they do by rendering judgment, and by issuing execution directing the sheriff to carry out that judgment.

263. Enforcement of the Law.—The duty of enforcing the law is ordinarily devolved almost entirely upon the courts. Without our courts many laws passed by the Legislature would be idle and useless; they would be no more than so much printed paper. But the courts enforce the laws by applying them to individual cases. The judge does not begin prosecutions, nor does he begin any kind of suits. His duty is to charge the grand jury to make inquiry as to the violations of the laws and to indict those who have committed crimes. He cannot charge the prosecuting attorney to do that, but whenever he thinks that officer is not doing his duty in beginning prosecutions against violators of the law,

he can summon a grand jury and charge them to make investigations, and if the evidence shows that a known person has committed a certain crime to indict him, and if an indictment is returned and the accused is brought into the court, the prosecuting attorney must proceed to try the case or dismiss it. And if the property of a private person is being withheld from him by another, that person may come into court on a written petition and ask the court to compel that other to yield up to him his own, and then the court will determine the rights of each in relation to that specific property, and enforce those rights by directing the sheriff what to do. Thus the laws are enforced by applying them in individual cases, just as the rules of your school are enforced by punishing individual violators.

264. Efficiency of the Courts.—But whether or not the laws will be properly enforced in all cases depends on the character and ability of the judge, and of the sheriff, and of the prosecuting attorney in criminal cases, and on the truthfulness of witnesses, and the fairness and integrity of juries. The people should choose men of solid character and proper ability to be judge, sheriff and prosecuting attorney; but those officers, however capable and however hard they may try, cannot prevent a "failure of justice" if witnesses testify falsely or jurors fail to obey the instructions of the court. Truthfulness is the foundation of justice.

265. The Morals of the Community.—Whenever the people cease to be truthful the courts will break down. Whenever it becomes the rule that witnesses "bear false witness" and jurors become corrupt, the courts will become a farce, and government a failure. So after all whether or not a citizen's property, life and liberty will be protected, in a large measure depends on the truthfulness of witnesses and the honest character of jurors. And whether or not witnesses will tell the truth, and jurors be true to their oaths and intelligent and just in their verdicts, depends in large

measure upon the moral character of the people, the kind and extent of the education they receive and their regard for the authority of law. It comes about, then, that every man who is trying to be truthful and honest, and every teacher who is inspiring his pupils with a love for the truth and for intelligence, and every parent who is teaching his children to be obedient, truthful, honest and industrious, is a help to the court in the administration of justice. Not only that, but he is adding to the value of every piece of property in his county and making his community a more desirable one in which to live. The just enforcement of the law against crime causes you to feel secure in your person and to feel that you can enjoy your property in peace and safety, and consequently that property becomes more valuable to you. If the courts afford you a sure method of recovering from your neighbor property or money that rightfully belongs to you, then your property becomes more valuable to you; and if the same sure method is guaranteed to every one in the community, then the value of all property is enhanced, for every one will feel that the community is bent on seeing that he enjoys in peace what belongs to him. But the courts cannot afford this sure method unless men have the moral courage to tell the truth when they go on the witness stand, and jurors the moral courage to be just when they come to make up their verdict.

266. Perjury.—But in spite of all parents can do, and schools can do, and moral instruction of every kind can do, there are some men so low in moral character that they will take an oath to tell “the whole truth and nothing but the truth” and then go on the witness stand and swear falsely. Corrupt and false swearing is perjury, and the law provides that any one convicted of perjury may be imprisoned in the penitentiary, and that any person who procures or induces him to commit perjury may be punished in the same way.

267. Ignorance of the Law.—Ignorance does not excuse the criminal. Ignorance of what the law is does not excuse the violation of law. If one is brought into court charged with the violation of a law he cannot plead that he did not know that the act he was doing was forbidden by the law.

This rule rarely works an injustice. It is a rare thing that one commits a crime without knowing it to be such. What the law says is a crime is in nearly every case the doing of something that all men know to be wrong. However little one may have read the laws of the land, yet if he does only what he knows to be right, what he does will rarely be in violation of law. The law is founded on good morals, and the churches, the schools, the home, and all good men generally teach good morals. Good morals require one to be honest in his business dealings, and not to cheat or defraud or take from another what rightly belongs to him, and hence, we may say, the man who is always honest will never commit a theft. And so it is with all other conduct; the boy who starts out in life with an honest purpose to always do right and remains true to that purpose will never commit a crime, however ignorant he may be of what is written in the law.

Besides, ignorance itself is often a moral wrong. The man who has a good opportunity to learn and will not do so commits a wrong against himself and against society. Schools are now established within the neighborhood of every child, and every child ought to be given some education unless prevented by sickness or poverty or some other unavoidable hindrance.

Nor is there any good reason why any person should remain ignorant of what is written in the law. If he has any doubt about it let him consult a lawyer, or let him get the statutes and read them. There are lawyers in every county, and printed volumes of the statutes can be found with every

justice of the peace, and in every court house, or if the laws are city ordinances, they can be found with the police judge, or mayor, or city clerk. And books containing these printed laws can always be bought by any citizen.

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CHAPTER VI.

COUNTIES.

268. Relation to State.—The county is a political subdivision of the State. There are one hundred and fourteen counties, besides the city of St. Louis, in Missouri. Each of the 114 has certain officers elected by the people. They are the county clerk, sheriff, circuit clerk, three judges of the county court, probate judge, recorder of deeds, prosecuting attorney, treasurer, collector, assessor, surveyor, public administrator, superintendent of schools and coroner. The city of St. Louis, in which the city and county governments are consolidated and which is classified as a county for some purposes, has the same officers as the other counties, except that it has no county court or county clerk, but in lieu thereof a comptroller and a board of public service and

numerous other officers appertaining to the government of a large city.

269. Boundaries.—Each county was organized by the Legislature, which fixed its boundaries. These boundaries can not be changed except by the Legislature.

270. County Seat.—The county seat is the seat of the county government. It is usually where the court house is. It can be changed only by a vote of the people of the county. In the court house are kept all the county records, and the county officers have offices there, and sessions of the circuit court and of the county court are held therein.

271. The County Court.—The county court consists of three officers, called judges of the county court. One of these is elected from the whole county for four years and is called the presiding judge. The other two are elected for two years each, one from one-half of the county and the other from the other half. This court meets in regular session every three months and sometimes in special session once a month, and even oftener, and is charged with levying taxes upon the inhabitants of the county to pay the expenses of the county government. This money is needed for paying the salaries of county officers and the fees of jurors, for building bridges and working roads; for caring for paupers and indigent insane persons; for paying the county's debts and the expenses of elections; for prosecuting criminals and maintaining the authority of government. It is also charged with seeing that these taxes are properly collected, and safely kept, and disbursed as the law requires.

If any person has a claim against the county he presents it to this court for allowance, and if it is allowed by the court the county clerk is directed to issue a warrant for the amount, which, when signed by the presiding judge and the clerk, may be paid by the treasurer. No money can be expended by the county for any purpose except by the direction of this

court, nor can the court direct its payment for any purpose not specified by law.

The county court designates voting places in each township, and appoints judges of elections for each place, for all general and special elections throughout the county, but not for school or city elections.

It exercises a supervising control over all county officers, and is charged with seeing that they do not appropriate funds belonging to the county. It also establishes new roads, and in doing that it is a judicial body, but in almost all other matters is a part of the executive department of government, established for the purpose of managing the business of the county, and that is its chief business.

272. County Clerk.—The county clerk records in proper books the doings of the county court. He apportions to each taxpayer of the county, according to the assessments made by the assessor and boards of equalization and to the levy made by the county court, the amount of state and county and school taxes to be paid by such taxpayer, and he also apportions to each school district the amount of county school funds to which it is entitled for conducting its schools. His books are, therefore, a check on the county collector and on the county treasurer. He counts the votes cast at all elections in the county, in the presence of two justices of the peace or two judges of the county court, and gives a certificate of election to the candidate for county office who has received the highest number of votes, and certifies to the Secretary of State the number of votes cast in his county for candidates for the various state and district offices and Representatives in Congress, and to the Governor the number of votes cast for Presidential electors.

273. County Collector.—After the county clerk has apportioned to each taxpayer the amount of taxes due from him, for state, county and school purposes, and made proper entry thereof in the tax-book, he turns that book over to the

county collector, who proceeds to collect the taxes. All taxes are payable at any time between September and the last day of December, and become delinquent on the first day of January, and after that a penalty of one per cent per month on the amount due is added for failure to pay in proper time. The collector cannot sue to recover unpaid taxes until after they have remained delinquent one year, but if not paid within that time he can sue at any time within the next four years.

In counties having township organization the taxes are collected by township collectors, there being one in each municipal township. The tax-books are prepared for them by the county clerk.

274. County Treasurer.—The county collector remits to the state treasurer the state taxes collected by him, and the balance he turns over to the county treasurer, and the treasurer pays out the county revenue on warrants issued by the county court, and the school moneys on warrants issued by the proper school board. The county treasurer is required to give a large bond for the faithful keeping of the money thus entrusted to him. The moneys are not permitted to lie idle in his hands, but are deposited in certain banks called county depositories, which pay the county a small rate of interest for the use of the moneys.

In counties having township organization the county treasurer is also *ex officio* county collector, and the taxes collected for county and state purposes are turned over to him by the township collectors, and then this *ex officio* collector sends the State's share to the state treasurer. But the school taxes are turned over to the township treasurer, who pays them out on warrants drawn by the proper school boards of the townships; and the township revenues, to be used for working roads, constructing small bridges, etc., are paid out by the township treasurer on warrants drawn by the township board.

The county treasurer and the county collector (and the township collectors) are required to make annual settlements with the county court, which goes carefully over their books, adds up the warrants paid and counts the cash on hand, to see that they have faithfully applied all the moneys received by them as the law directs.

275. The Assessor.—The assessor values the lands and other property in the county for purposes of taxation. He visits each property-owner in the county and requires him to give him under oath an itemized statement of all his properties, and then lists those properties in a book prepared for the purpose, called the assessment book, and places a value on each piece of property so listed, and makes a return of his work to the county clerk. If the property-owner refuses to give him a list of his property he makes the assessment as best he can from any other information he may obtain, and the value he fixes upon it is doubled; and if the property-owner makes a false list and that fact is shown, his taxes are trebled. If he refuses to make oath to his list, he is subject to a fine of not to exceed one thousand dollars, and if he makes a false oath he is liable as for perjury.

When the assessor has completed the assessment of all real and personal property in the county, the county board of equalization, composed of the three judges of the county court, the assessor and the surveyor, meets and equalizes the assessor's valuations, and increases or diminishes them as to them seems just. They give notice of any increases made by them, and then a week or two later meet again, this time as a board of appeals, to hear complaints from owners who feel the valuation placed on their property is too high, and change any valuation that seems unjust.

There is also a State Tax Commission, composed of three commissioners appointed by the Governor for a term of six years, which has been created to aid the State Board of Equalization (discussed in Section 235) in

equalizing and adjusting the valuations of property among the several counties. It has extensive powers. It has general supervision over county assessors and county boards of equalization, and power to compel omitted property to be placed on the assessment book, to raise or lower the valuations as made by these county officers, and to compel the property of individuals to be valued at its true value. The valuations fixed by it upon the property in a county, or those made by the county officers if it has made no changes in them, are the ones that a month or two later are laid before the State Board of Equalization.

That board, having the valuations of the property in all the counties before it, proceeds to equalize them, by raising those of some counties and lowering those of others, and the valuations as made by it are final. Then the county clerk in each county, in obedience to the order of the state board, increases or decreases on the assessment book, by the per cent directed by that board, the valuation of each piece of property in the county—that is, he by that per cent raises or lowers the valuations that had previously been made by the county assessors and the county board and the State Tax Commission.

The valuation of each piece of property in the county being thus fixed, the county court fixes the rate of taxation for state and county purposes, and makes a levy of that rate against all the property in the county, and directs the county clerk to calculate the amount of taxes each taxpayer is to pay, and the clerk makes such calculation, enters the amount in a tax-book, and turns that book over to the collector, who proceeds to collect the taxes.

Thus, if the county court is of the opinion that a tax rate of 40 cents on the hundred dollars valuation will afford the county enough revenue for meeting its current expenses for the next year, it makes a levy of forty cents on the hundred dollars valuation against all property in the county. Then if your land has been valued at \$600, and your personal prop-

erty at \$400, the county clerk lists your name and your land in the "Real Estate Book" and writes opposite thereto the valuation placed on the land, and the rate of taxation for county purposes (40 cents) and charges your land with \$2.40 county taxes, and also affixes the rate of taxation for state purposes as fixed by law (say 17 cents) and charges the land with \$1.02 state taxes, and then the rate of taxation for school purposes as fixed by the voters or school board of the district in which the land lies (say 45 cents) and charges the land with \$2.70 school taxes. In another book called the "Personal Assessment Book," he enters your name and the valuation fixed on your personal property (\$400) and then opposite thereto he enters the rate of taxation for county purposes (40 cents) and charges you with \$1.60 county taxes, and the rate of taxation for state purposes as fixed by law (say 17 cents) and charges you with 68 cents state taxes, and the rate of taxation for school purposes as fixed by the voters or school board of the district in which you live (say 45 cents) and charges you with \$1.80 school taxes. These books are then turned over to the collector, and he makes out one tax-bill in which he incorporates all the taxes due from one taxpayer, and proceeds to collect that bill.

The above illustration may not include all taxes you have to pay. It includes only the taxes for state purposes, for current county expenses and ordinary school taxes. The county may be indebted for a court house or jail, and, if so, the county court must annually add to the rate levied by it for current expenses such a tax as will produce enough money to pay the interest and one-twentieth of that debt. The county court may also, in obedience to the vote of the people, have issued bonds, and sold them, and used the money in that way obtained to build permanent public roads, and to pay those bonds it must levy a further tax sufficient to pay the interest on those bonds as it becomes due and one-twentieth of the principal annually. And a school district

may be indebted for a school house; if so, there must be levied by the school board and charged by the county clerk to the property-holders therein, in addition to the tax for paying teachers and paying incidental expenses, a tax sufficient to pay the interest on the debt and a part of the principal each year. And there may be a special road district which has issued bonds or incurred other debts in building public roads, and if so there may be a further tax to pay that indebtedness.

Neither does this illustration include city taxes levied for maintaining city government. They are not levied by the county court, and will be discussed elsewhere.

Railroads, street railways, telegraph and telephone lines are assessed by the State Board of Equalization, and then the portion thereof lying in any county and in any town or township therein and the valuation thereof are certified to the county court, which levies the same rate of taxes against them as against other properties in the county.

Both real estate and personal property are assessed or valued every year. And the property assessed is the property which the taxpayer had on hand on the first day of June.

276. The Circuit Clerk is the clerk for the circuit court. He issues summonses, subpoenas for witnesses, and warrants for the arrest of persons charged with crime, and keeps in suitable books a record of the doings of the court. He administers oaths to grand juries and petit juries and swears witnesses. In some counties he is also *ex officio* recorder.

277. The Sheriff is the executive officer of the county court, circuit court and probate court. He serves subpoenas upon witnesses and summonses upon defendants to lawsuits, makes arrests and carries out the orders of the courts. He is the chief peace officer of the county, and, in order to preserve the peace against any general and sudden defiance of law, can command every able-bodied man in the county to

assist him. This is called *posse comitatus*, which means "the power of the county." In some counties he is also *ex officio* collector.

278. The Prosecuting Attorney is the legal adviser of the county court in all matters of law. His chief duty consists in prosecuting men who have been indicted or arrested for crime. In most counties he also represents the county in all suits brought by or against it, and draws up all contracts to which it is a party; but in a few of large population there is a county counselor to attend to the civil business of the county.

279. The Recorder of Deeds copies in large volumes all deeds conveying land in his county, all wills devising lands, all mortgages and deeds of trust, and either files or copies all chattel mortgages. These records are open to the inspection of all persons. It is through these records that the titles to lands are traced and the owners thereof ascertained.

280. The Surveyor lays out such new roads as the county court may direct to be opened. He also fixes the boundary lines of the land of private citizens when requested to do so. He is usually the bridge commissioner of the county and as such superintends the construction of larger public bridges, and he may also be appointed county road engineer, and as such superintend the construction of the public roads of the county.

281. The Public Administrator.—When one dies, letters of administration are granted to the widow or widower, if there be such, or, if not, to those entitled to a distributive share of the estate or one or more of them, if they are residents of the State. But sometimes it happens that one dies without any relatives, or such relatives are residents of other states, or are minors, or are not able to make the necessary bond. In such cases the probate court may appoint any suitable resident administrator; or the public administrator, who has been elected by the people, comes forward and takes charge of the estate, and proceeds to administer it, under the direction of the court.

282. The Coroner.—It is the duty of this officer to examine into the cause of any sudden or suspicious death or killing in his county, and if necessary require the arrest of any person suspected of causing such death. He may be aided by a jury of six men.

283. Compensation of Officers.—The pay of all county officers is regulated by law. The amount is dependent upon the bulk of business pertaining to the office or the number of inhabitants. The most of them are required to charge a small fee for each official duty performed, and from the total amount of fees collected during the year they are permitted to retain a named amount for themselves and another named amount for their assistants. The pay of the county clerk and the circuit clerk varies from \$1250 in the least populous counties to \$3000 in the largest counties, and the pay of their assistants varies from \$600 in the smallest counties to \$16,000 in the largest. In St. Louis the pay of the circuit clerk is \$5000 a year, and he is allowed six or eight times that amount for his deputies. Prosecuting attorneys are paid from \$500 a year in the smallest counties to \$5000 a year in the largest. The pay of a judge of the county court is five dollars per day while attending sessions of the court, and mileage of five cents per mile traveled in attending court.

284. Townships.—Each county is divided into municipal townships, whose size and boundaries are made to suit the convenience of the inhabitants. These townships are given names just as the counties are, such as Richmond, Sugar Creek or Happy Hollow. In each township there is an election precinct or voting place, and often more than one, especially if it contains a large town or city.

285. Township Organization.—In seventeen counties in Missouri there is what is known as township organization. Under such a system the officers of a township are increased and those of the county decreased. Each township then has a township board, consisting of a presi-

dent, clerk, treasurer and two other members, whose duty it is to open up new roads, pay overseers for working the same and authorize the building of small bridges. Instead of a county assessor, the property is assessed by the township clerk, and instead of a county collector there is a collector for each township, and there is also a township trustee or treasurer in addition to the county treasurer. Its other officers are the same as those of other counties. In such a county, there being no county assessor, the sheriff takes the place of that officer as a member of the county board of equalization.

286. Rate of Taxation.—The Constitution fixes a maximum rate of taxation for county and township purposes. If the property in a county is assessed at less than six million dollars the rate can not exceed fifty cents on the hundred dollars' valuation. Where the valuation is between six and ten million dollars, the rate cannot exceed forty cents on the hundred dollars. If the valuation is over ten million and less than thirty million dollars, the highest rate permissible is fifty cents on the hundred dollars; in counties having thirty million or more, the rate for these purposes cannot exceed thirty-five cents on the hundred dollars' valuation. These are the highest rates for ordinary current expenses of the county and of the townships therein. And by current expenses is meant salaries of county officers, jurors' fees, the expenses of holding elections, working the roads, building bridges, printing, caring for the poor and the insane, and the keeping of prisoners in the county jail, and such matters.

In addition to these rates a further tax of twenty-five cents on the hundred dollars' valuation may be levied for the improvement of the public roads and building bridges, and if levied the money collected in pursuance thereto can be used only for these purposes.

In addition to these rates, the county court must levy a tax sufficient to pay the annual interest and one-twentieth

of the principal of any debt which the county may have legally incurred. That debt will be in the form of bonds issued to build a court house, or other county buildings, or permanent public roads, and the taxes raised to pay that debt can be used for no other purpose.

The county court cannot issue any bonds or create any debt in excess of the revenue for the year until authorized to do so by two-thirds of the voters of the county voting at a special election held for that purpose; and no debts can be made by the county except to construct public buildings or public roads, nor can the indebtedness of a county exceed five per cent of the assessed valuation of all property in the county, except that, for building a court house, jail or the construction of rock or gravel roads, two-thirds of the voters may authorize debts exceeding five per cent.

286a. Public Roads.—One great benefit of free government is that it affords means by which man's power for doing things is multiplied.

More than thirty years ago a great Missourian, who had lately returned from a journey around the world, came into the field one fine October day where a young man was ploughing. The young man had gathered the corn from a ten-acre field, and had hitched three horses to a sixteen-inch plow, to which was attached a rolling-cutter and a log chain. The ground was rich and fallow, and the big plow was turning weeds and grass and stalks far out of sight. The great Missourian looked on with pride in American freedom, and approaching the young man said, "Do you know that you have the power of a thousand Chinamen on those plow handles?" The young man replied that he did not; that he had thought a Chinaman was about as large and strong as he was. "He has as large a body as you have," said the great man, "and as much physical strength and activity; and he has a great brain, but he does not have your civilization or your intelligence. It would take a thousand China-

men, working with their crude implements of husbandry, to do in one day what you with three horses and that big plow are doing. They use the same implements their ancestors used thousands of years ago. Such a thing as that Missouri plow, doing what you are doing with it, would be an amazing wonder to them. Your government, your civilization, have set free the human mind, and in that freedom inventive genius has found opportunity to produce that big plow, the rolling cutter and the log chain, and the result is that your capacity for doing useful things has been multiplied a thousand fold."

What the great Missourian said illustrates how man's capabilities for doing useful things of many kinds may be multiplied. America has surpassed all peoples of the earth in inventing useful farming machinery. But the use of such machinery is largely a personal matter between the manufacturer, the merchant and the farmer; it is not a community interest; it is not a matter in which the farmer must have the co-operation of all other farmers in the community before he can own such machinery or successfully use it.

But the construction and maintenance of public roads is a community matter; no man alone can have them; in order to have them all the farmers of a community, or practically all, must co-operate and work together, and sometimes there must be co-operation between a farming community and a near-by town, or between all the citizens of a county, and in some cases many counties must co-operate. But American citizens have been slow in entering into that co-operation. Yet good roads are just as important as fine farming machinery. It is not enough to produce great crops; it is equally as important to transport them to the people who wish to consume them or are ready to transform them into useful manufactured articles. Good roads increase a farmer's capacity for doing useful things—he can haul larger loads in less time, and travel with greater ease and comfort; they in-

crease the capacity of factories, because raw materials from the farm or mine can be brought from a greater distance and at less cost. They bring rural and town or city dwellers closer together, increase their knowledge and understanding of each other's problems, and thereby the bond of friendly relationships is strengthened, which of itself is of great value, for after all friendliness and mutual confidence are primary elements of prosperous trade. A nation's strength, especially its ability to mobilize its industries and their products, is in a way to be measured by its roads.

Slowly different methods have been worked out for improving public roads in this State. They somewhat overlap each other, and it is not easy to explain them in such a way that the average pupil can clearly comprehend them. But the main features of the five principal plans may be stated.

1. The county court divides the county into small road districts, usually not less than three miles square nor larger than a township, and appoints a road overseer for each, who is required to build and repair the roads and construct small bridges, under the direction and according to the plans of the county engineer, who is appointed by the court and is required to be skilled in road building and repairing and in laying drains. The overseer is a resident of his district, but is not required to possess any such skill. The county court levies a poll tax on all able-bodied men over twenty-one and under fifty years of age and a property tax of twenty cents on the hundred dollars on all property in the district, and some time before August the overseer summons all persons liable to pay either tax, either to pay it in money or work on the roads at the rate of fifteen cents an hour for a man, or thirty cents an hour for a man and team, until the amount of the taxes has been worked out. The county court also levies an additional road tax of not to exceed twenty-five cents on the hundred dollars' valuation of all prop-

erty in the county, and out of this it buys tools and utensils for the various road districts, and pays to contractors the cost of building all larger bridges and otherwise helps in road improvement.

In counties under township organization, the township board divides the township into districts of convenient size, and appoints a road overseer for each, who works the roads according to the plans and directions of the county engineer; and the same taxes for road improvements are levied in them as are levied in other counties.

These provisions for constructing and improving the roads do not usually afford sufficient money or means for building rock or gravel or other permanent roads; yet they apply to all the counties except those which have issued bonds for the purpose of building permanent roads, and except those parts of other counties which have been organized into special road districts.

2. Territory eight miles square, within which is an incorporated city or village having less than one hundred thousand inhabitants, except in counties under township organization, may be organized into a special road district, and the district may by a vote of two-thirds of its voters issue bonds equal to five per cent of the aggregate value of all property therein, and sell such bonds and use the proceeds in building solid and lasting roads and bridges, and taxes sufficient to pay these bonds in fifteen years are levied annually on all property in the district, according to its assessed value. Such a district is created when a majority of the voters thereof at a special election vote for it. Then the construction, repair and maintenance of the roads, and all of the affairs of the district, are placed under the supervision of a board of three commissioners, appointed by the county court and the mayor and council of the city or village acting together. The roads are built and repaired under contracts made by the board with suitable persons, and not by overseers. The district's

share of all road taxes collected by the collector or appropriated by the State and of all license taxes are annually turned over to this board to be used in keeping the roads in good condition.

3. Road districts may also be organized of territory which contains no incorporated town, and in counties under township organization, as well as in other counties. In counties under township organization, the district may be as large as the township, but cannot contain less than 640 acres. In other counties it may be of any dimension desired, except that it must contain as many as 2000 acres. The material used in building the road may be whatever substance seems best adaptable to the soil and most available. The cost is paid by benefit assessments on the land on each side of the road to be improved, according to its value, but lands close to the road are charged more according to their value than those further away, because the benefit to them will be larger. In other words, the principle by which sewers are built or streets are paved in cities is followed in these districts—by charging the cost of the improvement against the lands benefited by it, and in proportion to the benefit each tract receives, as nearly as may be. Personal property is not chargeable with the cost of these roads, as it is in the other road districts. The cost of building and draining the road may be paid in one year or distributed through not more than seventeen years, according to the vote of the landowners. The district has a board of three commissioners, elected by the voters of the district, into whose hands is placed the work of building the roads and keeping them in repair, and they contract with suitable persons for doing the actual work. The district's share of the county road and license taxes is annually turned into their hands to be used in dragging and repairing the roads.

4. Every county in the State may vote bonds equal to five per cent of all its taxable property, to be sold, and the

money used in building permanent rock or gravel roads throughout the county. When that is done, the roads are built under the direction of the county court, and the entire work is done by contract according to plans drawn by a skilled civil engineer. The bonds are to be paid in twenty years by annual taxes, levied and collected just as are other taxes, but cannot be issued unless two-thirds of the legal voters authorize the county court to issue and sell them. Only a few counties have adopted this plan, but the number is likely to increase with the years.

5. The remaining plan consists of state and national aid to public roads, and the construction of state roads under the supervision of the State Highway Department.

The State levies a stamp tax of twenty-five cents on each sale of grain or certificates of stock for future delivery made by any broker, and the money arising from the sale of such stamps is used to constitute a state road fund. The State levies annual registration fees of from four to twenty-four dollars on automobiles or other motor vehicles owned in the State, and those fees when collected are set apart to increase that fund. The law requires every corporation doing business within the State to pay a registration fee of five dollars or more each year to the Secretary of State, and those fees, too, are passed to this fund. And other fees and license taxes may be set apart to increase it.

This fund is all used in constructing or maintaining public roads, but it is applied in three ways. (1) In 1916, as stated in Section 96, Congress set aside seventy-five million dollars to be distributed among the States, and to be expended in the next five years in building substantial rural-delivery-route post-roads, in accordance with plans prescribed by a state highway department and approved by the Secretary of Agriculture. Missouri's share of that appropriation is about two and one-half millions; but to obtain it the State was required,

in some way, to pay one-half the costs of constructing the roads. The General Assembly, therefore, in 1917, created a State Highway Department, consisting of a board of four members and an experienced engineer, to select state roads and provide plans for their construction. There are to be not less than 3,500 miles of state roads, and they are to be increased as fast as funds for their construction are available, and each county is to have its share. The plans of construction and the materials to be used having been prescribed by the State Engineer and approved by the Secretary of Agriculture, the counties or road districts proceed to the actual work of constructing the roads according to such plans, and one-half the cost is paid by the Government, and the other half by the State out of the State Road Fund, and so much of that fund is used each year as will enable the State to receive its share of the money apportioned to it under the act of Congress. State roads must be continuous, and are selected with due regard to the needs of the people of the county and of the State at large. In making the selections, existing roads may be utilized, or new locations made, as the state board may deem best.

(2) Congress requires the State to bear the expense of maintaining and keeping in repair a road which has been constructed with funds appropriated by it, and that may be done by the county or road district; but in addition to the funds under the control of the county court or district boards that may be used for that purpose, the State has provided other means by which that may be done. A sum equal to fifteen dollars per year for each mile of county-seat roads in all the counties is taken out of the State Road Fund, and used in dragging and bettering the roads running by the most practical route from one county seat to another. The work is done under the supervision of a county highway board, consisting of the county engineer and two other members appointed by the county court. (3) If any county or district will provide one-half the money necessary to surface a road with rock or gravel, or with a well constructed mixture of sand and other

earthy substance, the State will supply the other half out of its State Road Fund; but no county or district can receive for any one year for such purpose more than three per cent of the entire State Road Fund available for road improvements in that year; nor can it receive any sum at all for that purpose unless there is more money in the fund than is necessary to construct the state roads and drag and repair the county-seat roads, or unless the road to be surfaced is itself a state road.

286b. Drainage Districts.—Drains and levees for recovering and protecting overflow lands constitute another community interest. By properly constructed drains and levees not only may rich swamp lands and bottom lands subject to overflow be recovered and made to yield valuable crops, but the health of the people for miles around will be conserved. But such lands usually lie in large tracts, and to successfully drain them their owners must co-operate in a general plan by which one or more large ditches and numerous lateral ditches to drain the lands and one continuous levee or embankment to keep the waters of the river from overflowing them, may be constructed, each paying his fair share of the whole cost. The State government has provided ways by which such co-operation can be brought about.

The owners of the majority of the acres of any continuous body of swamp, wet or overflow lands may sign articles of agreement for the formation of a drainage district, and file them in the circuit court, and the court will give notice to all persons interested in the formation of the district, and after hearing all objections thereto, will determine whether or not the district should be organized and if the court finds it should be, it makes an order organizing the district with definite boundaries, and thereafter the district is a public corporation, just as is a city or a school district. The court appoints a board of five supervisors, and they appoint a civil engineer to survey out the needed ditches and levees, and to determine upon their location and size and probable costs,

and to make a complete plan of reclamation. Then three disinterested commissioners are appointed by the court to assess against each tract of land its share of the cost of the improvement, and when they have made their report the court hears objections by any land-owner to the amount charged to his tract, and having made a just apportionment of the entire cost among all the tracts the court makes an order charging each tract with its share, and that amount becomes a lien or tax against the tract, and must be paid, and if not paid the land may be sold. The entire amount is not due in one year; it is usually divided into twenty equal installments, and one is payable each year, and they are collected by the county collector. The board of supervisors may issue bonds of the district, in an amount equal to ninety per cent of the amount of all the tax assessments, to bear not to exceed six per cent interest, and sell them and use the money to pay for constructing the ditches and levees; and when the taxes are paid use the money to pay off and retire the bonds. All construction work is done under contracts entered into by the board of supervisors with persons specially equipped with proper machinery and qualified by experience for doing it. The board is a continuous body, and after those appointed by the court at the time of the organization have served the time for which they were appointed, their successors are elected by the land-owners, and usually each owner has as many votes as he has acres of land. It is the duty of the board to see to it that the purposes for which the district was organized are fully carried out, and that the ditches are kept open and repaired and breaches in the levees are renewed.

In much the same way drainage districts may be organized by the county court.

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CHAPTER VII.

CITIES, TOWNS AND VILLAGES.

287. Whence Powers are Derived.—In furtherance of the principle of local self-government the State Constitution requires the General Assembly to provide, by general laws, for the organization and classification of cities and towns. The powers of the Legislature are in some very important respects limited and restricted by the Constitution; and in a much more definite sense the powers of city governments are limited and defined by statutes enacted by the Legislature. A city or town can legally exercise no power except such as is given it by the General Assembly. That power is expressed in statutes enacted by the Legislature, and those statutes constitute the city's charter. But even the Legislature cannot enact just any statute for the government of cities it may

wish to enact, for the Constitution places limitations upon its powers. For instance, the Constitution says that taxes for city purposes cannot exceed a certain number of cents on the hundred dollar's valuation of property within the city, and the Legislature could not enact a statute authorizing the city to levy a higher rate of taxation.

Nor must it be forgotten that county and state authority extends over cities and towns just as much as over any rural district. The township in which is a city has the same officers as any other township, such as justice of the peace and constable, and city property is taxable for state and county purposes, just as are farms and other rural property. But a city has certain officers whose authority does not extend beyond the city limits. They perform duties pertaining to the city alone. They are mayor, board of aldermen, clerk, collector, treasurer, assessor, police judge and marshal in the smaller cities, and yet other officers in the larger cities.

288. Necessity for City Government.—It is necessary to have local officers to look after the affairs of a town. Wherever men congregate there is danger of disorder. Policemen and marshals are needed to preserve the peace, and to quickly suppress the vicious and lawless persons that often gather about towns. Besides, streets, sidewalks and sewers must be constructed, lights and water provided, nuisances abated and fires prevented. The county court can provide for none of these things. It is, therefore, to promote the general welfare of the people that city government is established.

289. Incorporation.—Before the adoption of the present Constitution the inhabitants of a particular town, desiring to organize as a city, applied to the Legislature for a special charter defining the powers of the city and its territorial boundaries. And as the Constitution prohibits the passage of any law that violates vested rights, either of a private citizen or of any corporation, some cities yet have these special charters. They cannot be taken from them,

but may voluntarily be surrendered by a majority of the voters, and the city reorganized under the general statute, and that in all except a few cases has been done.

But a city cannot be incorporated by a special charter from the Legislature under the present Constitution. That instrument directed the enactment of a general law under which cities should be classified and organized according to the number of their inhabitants. The same powers are given by the statute to each city of the same class, and that statute is its charter, or governmental chart.

Whenever an unorganized city or town wishes to organize so as to have a city government, a petition is signed by the majority of its taxable inhabitants and presented to the county court. The court enters on its records an order declaring such a city incorporated, declaring its class, defining its boundaries, and designating its first set of officers, who hold office until the time of the next regular election for all cities of its class, as fixed by law, and thereafter most of its officers are elected by the people.

290. How Governed.—Cities are governed by ordinances passed by the city council. These ordinances prescribe the duties of each officer, and undertake to punish only such crimes as may be classed as misdemeanors. But there are other ordinances defining the width of the streets, directing the making of sidewalks, defining the limits in which wooden houses may be constructed, and prescribing rules for the control of light plants and waterworks, sewers and street railways and the management of parks.

291. Classes.—Cities in Missouri are divided into four classes, according to population. All cities having five hundred inhabitants and not more than three thousand, are cities of the fourth class or lowest class; those having three thousand inhabitants and less than thirty thousand, are cities of the third class; those having thirty thousand inhabitants

and less than one hundred thousand, are cities of the second class; and those having one hundred thousand inhabitants or more, are cities of the first class, and all cities having between seventy-five and one hundred and fifty thousand inhabitants may elect to become a city of the first class. These classes differ in the powers delegated to each, the higher the class the greater its privileges. A city of one class having the requisite population may become one of a higher class when a majority of its legal voters ratify an ordinance making such change.

292. Cities of Fourth Class.—There are over two hundred cities in Missouri belonging to the fourth class. Each has the officers named in the first section of this chapter. The **mayor** is the chief executive officer. He exercises supervision over all other officers, appoints its minor officers, and may with the board of aldermen remove from office any officer, for cause, after a hearing. An ordinance cannot become operative unless it receives his approval, but if vetoed by him, it may be passed by two-thirds of the members of the council notwithstanding his veto, and it then becomes a law and can be enforced, if not in violation of the city's charter.

These are the general powers of mayors in cities of every class.

293. Board of Aldermen.—Each city of the fourth class is divided into not less than two wards, and from each ward the people elect two aldermen, and the whole number of such aldermen is called the board of aldermen. This board enacts ordinances for the city, allows accounts against the city, requires a settlement from each officer, fixes the rate of city taxes, contracts with companies to construct electric and gas light plants, or, when authorized by two-thirds of its voters, constructs such plants at the expense of the city, and otherwise controls the city's affairs. In

cities of a higher class some of these duties are performed by a comptroller and board of public service.

294. The Marshal is the chief police officer of cities of the fourth class. It is his duty to preserve order on the streets and see that they are not obstructed, to make arrests, and watch the conduct of suspected persons. He can arrest any person he may observe violating the ordinances, and all other persons against whom a warrant has been issued.

295. The Police Judge issues warrants for the arrest of persons charged with misdemeanors. When any person is brought before him by a marshal or a policeman, charged with having violated a city ordinance, he may have a jury called to try him, or if a jury be waived the police judge alone may try him. A person convicted of crime he may commit to jail unless his fine is paid or an appeal is taken to the circuit (or criminal) court.

Where the ordinances of a city have not created a police judge his duties are performed by the mayor.

296. Duties of Other Officers.—The duties to be performed by the clerk, assessor, collector and treasurer are similar to those required of the county officers of the same name, except that the clerk transcribes all ordinances into the general ordinance book, and he is elected by the board of aldermen, and not by the people, as are other city officers.

The term of all the officers of cities of the fourth class is two years, but one-half the aldermen are elected each year.

297. Cities of the Third Class have a few more privileges than those of the fourth class. More policemen may be provided for, and the city may build a hospital, construct a system of sewerage, enforce regulations to prevent the spread of contagious diseases, and fix the rates that telephone and electric light and street railway companies may charge for any service rendered by them, and if those rates are approved by the Public Service Commission of the State they become

binding on the companies and the city and its inhabitants. Their affairs are regulated by a council composed of two councilmen from each ward, and the entire number of wards cannot be less than four.

For every city of ten thousand inhabitants or more, the State provides factory inspectors, whose duty it is to inspect all large factories, and see that the laws are obeyed which require healthful conditions, that children under fourteen years of age are not permitted to work therein, that children between the ages of fourteen and sixteen years are not required to work more than forty-eight hours a week, and that seats and other conveniences are provided for women working therein.

298. Cities of the Second Class have still greater privileges. They make more rigid ordinances to prevent fires, may sell real property for taxes, may control the construction of street railways and may establish rigid sanitary regulations. Their legislative powers are vested in a common council, composed of one councilman from each ward and a president of the council, all of whom are elected by the city at large for a term of four years, one-half the councilmen being chosen every two years, and the other half two years later. There are as many councilmen as there are wards, and one is chosen for each ward, who must reside in that ward, but he is elected by the city at large—that is, all the legal voters of the city may vote for candidates for councilman for that ward, and the one who receives the highest number of such votes is elected. Joplin and Springfield are the only cities belonging to this class.

What is said in section 297 and this section is true of cities of the third and second class unless they have elected to adopt commission form of government; but if they have chosen to do that they are governed by what is said in the next section.

298a. Commission Form of Government.—The statutes authorize a city of the second or third class by a majority vote of its people, to adopt what is popularly called "commission form of government." The form is prescribed by statutes enacted by the Legislature.

In a city of the second class which has adopted the form, there is a mayor and four commissioners, and they constitute the city council, and the chief executive officers as well. As the council they enact ordinances for the government of the city; and as executive officers, each is at the head of an administrative department. The mayor is commissioner of the department of public affairs and safety, and as such has supervision over the police and fire departments; another member of the council is commissioner of public health and sanitation; another is commissioner of revenue, and as such has charge of assessing, collecting and paying out city taxes; another is commissioner of public utilities, and as such has supervision over light plants, waterworks, street railways and city properties and parks; and another is commissioner of streets and as such has supervision over streets and sidewalks and their construction. These are all elected by the people; as is also a municipal judge, before whom are tried persons charged with violating the city ordinances. They are nominated at a primary election—not by parties, but on a general ticket. All persons who wish to be elected mayor, for instance, must file papers with the city clerk stating they desire to become candidates for that office; then all their names are printed in one group on the same ticket, and on primary day each voter strikes off the names of all of them except one, and the names of the two who receive the highest number of votes are printed on the same ticket for use on election day, as the candidates nominated for mayor, and then the voters choose between those two. The other commissioners are nominated and elected in the same way. These commissioners all receive good salaries and are sup-

posed to devote a great deal of time to the city's business. If any one of them does not perform his duties with satisfaction he may be removed by the people, and that is done in this way: one-fourth of the voters sign a petition demanding his recall and file it with the clerk; then the council must call a special election to determine the matter, and if a majority of the votes cast thereat are for his removal he must vacate the office.

The council appoints a city clerk, and may remove him at its pleasure. The mayor appoints a city attorney and chief of police, and may remove them at his pleasure; the commissioner of public health appoints a city physician, who also may be removed at pleasure. Each commissioner may appoint as many assistants and laborers as the council may deem necessary for the proper performance of his official duties, but each must be selected from three persons who have stood the best examination before a non-partisan civil service commission.

The council may enact laws on many subjects, but upon the petition of one-tenth of the voters an ordinance granting a franchise to construct a street railway or to lay water pipes or to erect a lighting system in the streets must be submitted to the legal voters and if not approved by a majority of them voting on the subject it fails. In much the same way the people may propose ordinances themselves and have them submitted to the legal voters and if approved by them they become legal enactments.

In cities of the third class which have adopted the commission form of government, the council consists of the mayor and two councilmen in cities having less than twelve thousand inhabitants, and of the mayor and three councilmen in cities having between twelve and twenty thousand, and of the mayor and four councilmen in cities having between twenty and thirty thousand inhabitants. They are nominated at primaries on non-partisan tickets, and elected by

the legal voters, just as the mayor and commissioners in a city of the second class are. This council enacts ordinances for the government of the city, and each member of it is the head of one or more of the five executive departments of the city, and as such they supervise the construction and maintenance of streets and sidewalks, of waterworks and public lights, of sewers and parks, of assessing and collecting taxes, and of all other city business. These officers may be recalled by the people when they do not prove satisfactory, and the people may use the principle of the initiative in enacting ordinances or the principle of the referendum in nullifying ordinances which the council have attempted to enact.

The purpose of the commission form is to take politics out of city government, put a stop to waste, and make it more efficient and useful and more responsive to the wishes of the people. It is being tried in various states, in small as well as large cities, but has not yet been tried for a sufficient length of time to fully demonstrate that it is the means through which this purpose may be accomplished.

299. Cities of the First Class.—A city of this class has the power to establish and own cemeteries, parks, waterworks, gas and electric light plants and hospitals, to abate nuisances, and to enforce rigid regulations against the spread of contagious diseases. It has power to enact ordinances regulating the use of streets, stockyards, wharfs, slaughterhouses, vehicles, and to provide all needful regulations for orderly city government. Many of these powers are possessed by cities of all other classes, and the Legislature is constantly adding to the powers which cities may exercise. The ordinances of a city of the first class are enacted by a common council, composed of five councilmen, elected from the city at large, each for four years, two for one year and the other three two years later. One of them is president of the council, who in the absence of the mayor performs the duties of that officer. There are a city assessor, counsellor, comptroller and

license inspector, appointed by the mayor, who has power to remove them for cause, after notice and a hearing. There are also a city auditor, treasurer and judge of the police court, elected by the voters for a term of two years. There is also a strong force of policemen, who are under the control of commissioners appointed by the Governor.

St. Joseph is the only city in the State that strictly belongs to this class. Kansas City and St. Louis each have a sufficient number of inhabitants to belong to such class—one hundred thousand—but both have been organized under special charters pertaining to them alone. In both of them, however, as in cities of the first class, the law provides for a system of registration of voters, by which lists of voters by wards and precincts are made a few weeks in advance of an election, and then no person who has not so registered can vote.

300. Kansas City.—Under the Constitution a city having more than one hundred thousand inhabitants may frame a charter for itself, and when this is adopted by four-sevenths of its qualified voters, it supersedes any existing charter, and may itself be amended at any subsequent time by an ordinance adopted by a vote of the people. But such charter must always be in harmony with and subject to the Constitution and laws of the State. Under this provision and an enabling act of the Legislature, Kansas City was organized with a new charter in 1889. There is a Common Council of two houses, called the Upper House and the Lower House. The Upper House consists of as many members as there are wards, and they are elected by the voters of the city at large. The Lower House consists of one member from each ward elected by the people thereof. An ordinance to be in force in the city must be passed by each house and be approved by the mayor. The police department of the city is managed by a board of police commissioners, composed of the mayor, and two commissioners appointed by the

Governor. This board appoints policemen and controls and regulates the duties and discipline of all peace officers of the city.

301. City of St. Louis.—Prior to 1876 the city of St. Louis was a part of St. Louis County. But in that year so much of the county as was embraced within the city was set off to itself, and city and county government in the city was consolidated. That was done in pursuance to what was known as the Scheme and Charter, provided for by the Constitution, which authorized the city to frame and adopt a charter for its own government. The city does not have a county court, but it has circuit judges, a sheriff, recorder of deeds, circuit attorney, prosecuting attorney, circuit clerk, probate judge, collector and public administrator, all of whom are elected at the general elections held in November, and perform duties similar to those performed by officers of the same title in other parts of the State.

In 1914 thirteen citizens, appointed for the purpose, framed a new charter, which was adopted by the legal voters at a special election, and under the Constitution it became the chart by which the government and ordinances of the city are shaped. It provides for the election by the people of a mayor and a comptroller, each for a term of four years. It also provides for a board of aldermen, consisting of a president, and one alderman from each ward, elected on a general ticket by the city at large, each for a term of four years, one-half of them being elected every two years. This board has but one house and constitutes the city's legislative assembly. The mayor and comptroller have seats and a voice, but no vote, in the board. The people also have power, through initiative petitions, to propose ordinances and amendments to the charter, and have them adopted by a majority of the legal voters, and an ordinance so adopted cannot be repealed by the board of aldermen except by two-thirds of its members. And in much the same way the people can

compel ordinances enacted by the board to be referred to them for approval or rejection. And upon the filing of petitions signed by twenty per cent of the voters, any of the elective officers may be removed by a majority of the voters at a special election held for that purpose.

The mayor appoints an assessor, treasurer, city counsellor and other officers, and may remove them for inefficiency or neglect of official duty. The comptroller is at the head of the finance department, and the assessor, collector and treasurer are each in charge of a subdivision of that department, and as such look after the assessment and collection of taxes and the paying out of the city's money. There is ~~also~~ a board of public service, composed of a president and four directors appointed by the mayor, each of whom is at the head of one of the great administrative departments of the city government. They have charge of the construction and repair of streets and sidewalks, parks and boulevards, sewers and waterworks, hospitals and other public buildings. They exercise supervision over the construction and operation of street railways, lights and telephones; see to it that the streets are kept clean and the public water pure; investigate the causes of diseases, and, through their numerous assistants, perform many other duties for the public.

The police, consisting of sergeants, captains, lieutenants, patrolmen, turnkeys and detectives—there being about 2000 officers in all the grades—are appointed by and are under the control of a board consisting of the mayor and four commissioners appointed by the Governor. The salaries of these policemen are fixed by statutes enacted by the Legislature, but are paid by the city. The entire expense of the police force is about two million dollars a year.

Elections are under the control of a board of election commissioners appointed by the Governor. The judges and clerks appointed by this board have charge of the registra-

tion of voters and the casting of votes at every precinct at all elections, state and city.

There is also an excise commissioner appointed by the Governor, who has power to grant and revoke dramshop licenses.

302. Villages.—The statutes provide methods by which any town of less than five hundred inhabitants may be organized as a village. When a petition signed by two-thirds of its taxable inhabitants is presented to the county court, it can declare such village incorporated, with defined boundaries. The powers and duties of village government are vested in a board of five trustees, and the first board is appointed by the county court at the time the village by its order is declared to be incorporated, and they hold office until their successors are elected at the April election. The trustees enact ordinances providing for the improvement of streets and sidewalks, for abating nuisances and suppressing disorders, for levying and collecting village taxes, and for extending the town's boundaries; and have power to appoint a treasurer, assessor, collector, and a constable or marshal. When the number of the inhabitants reach five hundred, the village, by a majority vote of its voters, may become a city of the fourth class.

303. Elections.—The state statutes fix the time for holding elections for city officers in all cities except those organized under special charter. The date is not the same throughout the State. In the most of the cities it is the first Tuesday in April; in the rest, it is the first Tuesday after the first Monday in April. All other elections are called special and are held (usually) at such time as the council may direct.

304. Extending City Limits.—A city of any class has the power to extend its limits indefinitely, and take within the corporation as much of the surrounding country as it desires, except that one city cannot include another within

its boundaries unless the legal voters thereof consent. The extension is made by the mayor and council, but in cities of the third or fourth class they can do so only when a majority of the voters consent, but in cities of the first and second class the limits may be extended by the mayor and council alone without the consent of the voters. The inhabitants of the added territory have no voice in this extension, unless the new addition includes a part of another incorporated town, in which case four-sevenths of the voters thereof must consent to be added to the city before such extension can be made.

305. City Assessors.—In cities of the first class there is an assessor who values and assesses all property within the city for purposes of city taxation. The process is very much the same as is the assessment of taxes for county purposes. The city assessor places a value on each piece of property and lists it in proper books, and these are turned over to the clerk, and he gives notice that any person dissatisfied may come before the board of appeals and have the injustice corrected. Then the board of appeals, consisting of the mayor, the comptroller and the president of the council, equalizes the valuations made by the assessor, and increases or diminishes them as may seem just, and then the council fixes the tax rate, and the city clerk "extends the taxes" or makes up the tax book, and turns it over to the collector, who proceeds to collect the city taxes.

In cities of the second class the valuation of all properties in the city made by the county assessor, as corrected by the county board of equalization, is adopted by the city as its own, and is used as the basis for the levy of city taxes.

In cities of the third class the city assessor and the county (or township) assessor make the assessment together, and then when the county board of equalization meets the mayor and city assessor meet with them and help adjust the valuations of all property within the city, and then the

valuations as made by that board become the valuations of all property within the city for both county and city purposes.

In cities of the fourth class there may or may not be a city assessor. If the city prefers, it need not have such officer. If it does not, the valuations as finally fixed by the county board of equalization become the valuations for city purposes. If the city have an assessor of its own, he and the county (or township) assessor assess the property together, and then the valuations as fixed by the county board of equalization become those for the purposes of city taxation.

306. Rate of Taxation.—In addition to taxes levied for the support of the county and state government and for public schools, the inhabitants of a city must also pay taxes for maintaining the city government. In cities having less than one thousand inhabitants the rate of taxation cannot, for ordinary city purposes, exceed twenty-five cents on the hundred dollars valuation; in cities having between one thousand and ten thousand inhabitants the rate cannot exceed fifty cents on the hundred dollars; in cities having ten thousand inhabitants and less than thirty thousand the rate cannot exceed sixty cents on the hundred dollars; and in cities of more than thirty thousand inhabitants the rate cannot exceed one hundred cents on the hundred dollars valuation.

In the city of St. Louis, since the city and county governments are there consolidated, the city may levy for municipal purposes, in addition to one hundred cents on the hundred dollars, a tax rate not exceeding the rate which a county having thirty million dollars of property or more may levy for county purposes—that is, the rate for city purposes may there be as high as \$1.35 on each hundred dollars of valuation.

This provision in the Constitution which fixed a maximum rate of taxation for city purposes is of the greatest im-

portance. Perhaps there is not a county court or city council in the State which does not tax the people the highest rate permitted by law, and it was, therefore, a wise provision in the Constitution which fixed a mark above which taxation cannot rise.

But to meet the cost of working the streets the cities are authorized to levy an annual poll tax of two or three dollars on all men between the ages of eighteen and fifty years. And besides, for meeting its other current expenses it has the power to charge a license tax on persons wishing to carry on certain kinds of business, such as saloons, peddlers and auctioneers. But a license is not really a tax; it is a charge or fee for the privilege of doing business.

The rates stated in the first two paragraphs of this section are the rates for ordinary current expenses. Those rates for those purposes cannot be exceeded in any case. But two-thirds of the voters of the city may authorize the city to incur a debt for the construction of waterworks, light plants, public buildings, public sewers and in some cases streets. But again the Constitution fixes a limit to the amount of debt a city may incur. It says that the amount of the city's entire indebtedness cannot exceed five per cent of the assessed valuation of all property in the city, except that a city having between 2,000 and 30,000 inhabitants may incur an additional debt of five per cent for constructing or purchasing waterworks and light plants to be owned by the city. It further says that before any debt can be created for any purpose two-thirds of the voters at a special election must consent thereto, and by the same vote they must authorize the city council to levy, in addition to the taxes for ordinary city expenses, a tax sufficient to annually pay the interest on the debt and the debt itself within twenty years. Thus in no case can the city's indebtedness exceed ten per cent, and in no case unless it owns the waterworks or light plant can it exceed five per cent. But it cannot be stated just what the

tax rate for paying the debt will be. That will depend on the amount of the debt and the entire valuation of all property in the city. It will vary with the years. But it is the duty of the city council to fix it at such an amount as will pay the interest annually and the debt itself within twenty years after it was created.

307. Benefit Assessments.—The taxes discussed in the preceding section do not include the cost of constructing sidewalks or sewers or paving streets. The cost of constructing sidewalks and paving streets are charged against the abutting property-owner, usually in proportion to the number of front feet he has fronting on the street or sidewalk to be improved. In all cities the cost of new sidewalks is charged to abutting property. In cities of one or two classes the cost of grading the street and bringing it to a general level are paid out of the city treasury, and the costs of paving and guttering are paid by the abutting property-owners; in others, the entire cost, both of grading and paving, is paid by the property-owners. The costs of a public sewer (by which is meant a general or main sewer; a sewer which drains all the territory of the city) are paid by the whole city out of its general taxes or revenue in the treasury; but the costs of district sewers are charged against real estate in the district drained by them, according to area, each square yard being charged with the same amount.

These charges for sidewalks, streets and district sewers are not the taxes referred to in section 306. They are not in strict sense taxes at all, although they are usually referred to as "special taxes;" they are, rather, charges for benefits received by the property against which they are assessed, because, it is assumed, its value will to that extent be increased by the public improvement, and they are for that reason often referred to as "benefit assessments." The money paid therefor cannot be used for the purposes for which money received as taxes may be used, that is, for paying any of the ordi-

nary expenses of the city, but it can be used only for the purpose for which it is assessed—the construction of the sidewalk, the paving of the street, etc. Sometimes the money does not go into the city treasury at all, but what are called “special tax bills,” indicating the amount each abutting property-owner is to pay as his share of the cost of the sidewalk, street, etc., are issued to the contractor who does the work in payment therefor, and then he has the right to have the circuit court charge the amount of that “special tax bill” against the property, and if it is not paid, the property may be sold by the sheriff.

The city council (in the case of the larger cities, on the recommendation of other officers of the city) has the right to determine when a new sidewalk is needed and to order the work to be done and how and of what material. When it has done that, the owner of the property may put it down himself within a certain time, and if he fails to do that the city will have it done and charge the cost up to him. And if the improvement is the macadamizing or paving of a street or the construction of a district sewer, the city contracts with some one to do the work and then apportions the cost among the property-owners, and issues special tax bills for the amount.

308. Police Regulations.—As a city grows in size and density, greater care must be taken to preserve the health and morals of its inhabitants. The closer men get to each other the more likely are their acts to transgress upon each other's rights. So a city has the right to establish reasonable regulations over those acts of its inhabitants which may affect mutual rights. It may abate nuisances, establish quarantine against contagious diseases, prevent pig sties, dairies and slaughter-houses within the corporate limits, forbid the throwing of slops in the street and the obstruction of sidewalks by goods-boxes and shade trees. It may, in order to ward off disastrous fires, prevent the building of

wooden houses on certain blocks, and it may confine livery stables and lumber yards to certain streets. It may regulate the speed of trains, street cars, horses and vehicles within the city limits. There are many other things it may do for preserving the health, the life, the peace or the morals of the inhabitants. Regulations of that kind are called "police regulations," and the police powers of a city depend on the class to which it belongs—the higher the class the greater its powers. But no city can exercise any power of this kind except such as is specifically given it by its charter, and even then it can exercise it only in a reasonable way.

308a. Sanitation.—The preservation of the health of its inhabitants is a primary duty of a city. Good health is the best property any one can own; it is a property without which no other property, however large, will bring any lasting satisfaction; yet it is a property which if once lost can seldom be fully regained.

Every precaution should be taken to protect the health of the inhabitants of a city or rural community. Cleanliness is the great remedy. Impure water, impure food, vegetable and animal matter allowed to decay on the back ends of lots and alleys, the hundreds of unclean things that accumulate on streets and in gutters, the filthy habit of spitting on sidewalks and in other public places, stagnant water and cesspools on vacant lots, the refuse from stables, factories and dwellings, cause typhoid fever and tuberculosis or consumption and generate many other diseases. And to bring about cleanliness there must be co-operation between families and the city government.

Kitchens, back yards and stables must be kept clean. Cisterns should be well built, and not only should all surface or seepage water be kept out of them, but the water should be filtered or in some other way made pure; and if that cannot be done, the water should be boiled before it is drunk. These duties rest upon the family.

On the other hand, certain other necessary things can be done only by the city government. Underground sewers, tight, well-laid and ample in size, are of great value to a city, for they carry away the foul waters, and thereby the health of the people is promoted. Well-paved streets are not only convenient for travel and add to the general beauty of a town, but they also aid sewers in quickly carrying off waters before they become infested with poisons, and thereby add to the public health, for the pavement makes easier the work of keeping them clean. Better water, especially in a town where much smoke is permitted to settle on roofs and in gutters or where foul birds are numerous, can usually be obtained from a general water-works system than from cisterns or wells; but to be pure the streams or wells from which it is taken must be guarded against pollution, and it must often be filtered or made to pass through numerous settling basins, and there must be no openings or leaks in the mains or pipes. The streets and alleys must also be cleaned, if the town is to be healthy and the air sweet and pure. To bring about a general condition of cleanliness, and to guard against the spread of contagious diseases, there must be, especially in the larger cities, a board of health, and often a city physician, to enforce health regulations.

309. City Government is the weak part of American government. In no other are honesty and efficiency so difficult to obtain. In no other are taxes so often wasted. In no other is injustice so often done to the property owner. In no other does the lawless, the idle, the mean man exert such power. In no other is it so difficult to get upright and competent men to become candidates for office. In no other are men of wealth and education so unwilling to exert their influence to elect to office efficient and capable men, or to become officers themselves. There are many reasons why this is true. To discuss intelligently these reasons would far

outrun the limits of a book like this. But the remedy is at present largely in the hands of the voters of the city, especially of the smaller cities. But no plan could be suggested that would be a remedy in every case. A plan that would prove efficient in one city would fail in another of different conditions. To be efficient the plan employed must be suggested by local conditions. But in every city the remedy can be found if the upright voters try hard enough to find it

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CHAPTER VIII.

PUBLIC SCHOOLS.

310. Purposes of Education.—The purpose of education is to prepare one for right living. Those are comprehensive words. They suggest almost every sound reason for study and learning. They include man's duty to himself and to his fellow-men. The purpose of schools is to help men to grow stronger and better; to become better men—better workers, better friends, better citizens—to have stronger bodies and sounder minds—to acquire good manners and have proper regard for the rights of others.

In order that every person may acquire an education, or at least some education, public schools have been established by law. In providing schools for every child the State did a thing that entitles it to a high place among great nations. Schools for the masses were not known in ancient times, and they are known only among the most enlightened nations of our time. The State is justified in levying taxes for the support of such schools, not only because education multiplies the productive capacity of its citizens many fold and thereby their general riches are greatly increased, but because public schools are the greatest of all forces in harmonizing and uni

fyng and Americanizing all the people. Our hearts ought to swell with gratitude and pride in our State because of the great good that is being accomplished by the public schools.

The State schools are divided into common schools, consolidated schools, town schools, city schools, normal schools, and a university.

311. Common School Districts.—Whenever there are twenty children between six and twenty years of age, in any locality not organized into a school district, the voters thereof are authorized to organize such a district, which may be irregular in shape and contain any number of children of school age, above twenty. If the unorganized territory contains less than twenty children, it may be added to any adjoining district. New districts may also be formed by dividing those already organized. But that cannot be done unless each of the districts affected, including the one to be formed, will still contain as many as twenty children of school age, and property of an assessed valuation of fifty thousand dollars or eight square miles of territory.

In each common school district are three directors and if a school is actually conducted at least one school house and one teacher.

A rural school having six directors is classified as a consolidated school district. A district having six directors in which is a city of the fourth class or an incorporated village is classed as a town school. A district in which is a city of the first, second or third class is classified as a city school.

312. Annual Meeting.—The law authorizes all the legal voters of a common school district to meet on the first Tuesday of April of each year, and (1) to elect by ballot one director for three years; (2) to determine the length of the school term for the next year in excess of eight months, and (3) the rate they will tax themselves in excess of forty cents on the hundred dollars valuation, if any, for maintaining

the school; and if the district has no school house, or desires a new one, to vote (4) for the erection of such a house, and to determine (5) on what amount they will further tax themselves for such purpose; (6) to decide on changes of the boundaries of the district, and (7) to vote (once in four years) for a county school superintendent; and to transact other business.

313. School Boards.—The school board of a common school district consists of three directors, each of whom holds office for three years, one being elected each year. A director must be a citizen of the United States, a resident taxpayer, twenty-one years of age, and must have paid a state and county tax within one year next preceding his or her election, and may be either a man or woman. A director of any school must possess these qualifications.

314. Powers of School Board.—(1) The school board is required to make rules and regulations for the government of the school. If it fails to do so, the teacher can make such rules or enforce those made for a previous teacher. (2) It is required to continue the school for eight months in each year, if a tax of forty cents on the hundred dollars' valuation and the district's share of the other school funds, together with the money left over from the previous year, will suffice to pay the expenses of a term of that length; if the moneys arising from these three sources are sufficient, it can continue the school for as many months as it deems wise—even for a longer term than eight months. (3) If two-thirds of the voters at an annual or special election have authorized the district to incur an indebtedness for a school house, the board can issue and sell the bonds of the district to obtain the money with which to build the house, and must direct that such a tax be thereafter annually levied upon all property in the district as will pay the interest and principal of the bonds as they may mature. And if a majority of the qualified voters who are taxpayers have authorized an increase in taxes to a certain

rate for one year for the purpose of maintaining school or repairing or furnishing buildings, the board may direct a tax levy of that rate for the one year. (4) The board is required to employ legally qualified teachers. The law requires the contract to be signed by the teacher and president of the board, and attested by the clerk; but if the board, as such, by an order entered on its record, actually makes a contract with the teacher, it will not be void because the president refuses to sign it, or the clerk to attest it. But no contract is binding unless the teacher holds a teacher's certificate, which must be in force for the full time for which the contract is made, which means that sometime before school begins the teacher must obtain a certificate which extends to the end of the term or the time embraced in the contract. No teacher once legally employed can be discharged until the certificate is revoked by the county superintendent, or the State Superintendent or other officer by whom it was issued. (5) The board is required by law to provide the necessary globes, maps, charts, supplemental books and fuel, to keep the school house in good repair and it and the grounds in clean and healthy condition, and to cause the building to be properly lighted, heated and ventilated, and the floors to be swept and the fires to be made—all at the expense of the district. It also has power to exclude from attendance any child afflicted with a contagious disease.

A director receives no pay for his services, and he cannot be a teacher in the school of the district for which he is director.

These are the main powers and duties of school boards in all districts.

314a. Consolidated Districts.—The voters of a community may organize a consolidated school district for the purpose of maintaining both elementary schools and a high school. This applies to rural and village communities, except that the territory of a town which has two hundred children of school age cannot be included in such a district.

The district must have either an area of twelve square miles or two hundred children of school age. Two or more common school districts, in whole or in part, may be consolidated into such a district, but no part of an existing district can be taken into the consolidated district unless the part left contains eight square miles of territory and twenty children of school age or property whose assessed value is fifty thousand dollars and twenty children of school age. The district has six directors, each of whom serve three years, two being elected each year. If it secures a building site of five acres the state pays one-fourth the cost of erecting a central high school building (up to \$2,000); and if it maintains an approved high school, including one year's course in agriculture, the State helps it pay the expense by giving it annually twenty-five dollars for each square mile of its territory, but not to exceed a certain amount, usually eight hundred dollars a year. The board is required to continue the elementary schools of the district eight months in the year, if a tax rate of sixty-five cents on the hundred dollars of assessed valuation of all property in the district, together with its share of the public school funds and the money on hand, is sufficient to maintain a school of that length; and if it levies that rate and the amount of money arising from these sources is not sufficient to continue school for eight months, the State will aid it to make up the deficiency by giving it money out of the State Treasury, usually an amount equal to two hundred dollars for each elementary school in the district.

315. City and Town Schools.—The statutes provide that school districts embracing cities or incorporated villages may, by a vote of the people, organize into a city or town school district. In such a district a school building may be erected in each school ward, and one general high school may also be provided. If the school moneys are sufficient these schools must be kept open not less than eight months nor more than ten months in the year. Each is controlled by a

board of six directors, two of whom are elected each year. In these districts instead of an "annual meeting," such as is held in a common school district, there is an election, conducted very much as other general elections are. They are held in April, on the same day city officers are elected. The propositions upon which the voters are to pass are printed on ballots and the voter scratches from his ballot the propositions he does not approve. Those propositions relate to the same subjects that an annual school meeting may consider as mentioned in section 312, except that where additional school houses are to be built the voters do not have the right to determine their location, but the board divides the district into wards, and selects the site for a building in each.

1. The State grants to a city or town school a small amount of money, usually from \$200 to \$800 a year, to aid it in maintaining a high school. No town whose taxable wealth is more than six hundred thousand dollars can receive such aid; and the less the assessed valuation of the property in the town, the greater is the amount of aid it receives. The purpose is to aid a town to maintain a high school which is doing all it can to help itself and yet does not have sufficient funds to do so. In order to receive the aid the district must levy the highest school taxes permitted by law for "school purposes" and maintain a high school with an average daily attendance of at least fifteen pupils and give one year's course in agriculture.

2. A city school district is a different corporation from the city government. It may have different boundaries. The extension of the city limits automatically extends its boundaries to the same limits, but it may include territory that the city does not. Its officers are in no wise answerable to any city officer for their conduct. It is a separate organization. Although it may embrace the same inhabitants and the same territory as does the city, it is just as independent of the city government as is any rural school in the county, except, of

course, city police regulations concerning the public health must be observed, and the school property is chargeable with its share of the cost of sewers, sidewalks and street improvements, but it cannot be otherwise taxed.

3. In cities having seventy-five thousand inhabitants elections are not held annually, but only once in two years, and at each such biennial election two directors are elected for a term of six years, except in St. Louis where there are twelve directors, all of whom are elected for a term of six years, one-third of them being elected every two years.

These boards may prescribe rules and regulations for the examination of persons desiring to teach in their schools, may provide large libraries and free reading rooms, and may establish and maintain free night schools. Otherwise, their powers are very similar to those of all other boards.

315a. School Day, Week and Month.—The school day in all schools consists of six hours occupied in actual school work. The school week consists of five school days except when Thanksgiving Day, Christmas, February 22nd or July 4th fall upon a regular school day; then the remaining four days, if taught, constitute a legal school week. The school month consists of four school weeks.

315b. Special Days.—The first Monday of October is designated by law as Missouri Day, and is set apart as a day commemorative of Missouri history, to be observed by teachers and pupils with appropriate exercises. The first Friday after the first Tuesday in April is Arbor Day, and all teachers, pupils and patrons are requested by the State, but not required, to observe it in planting trees, shrubbery and flowers upon and around the school grounds. The 21st of March is Bird Day, and teachers, pupils and patrons are requested by the State to devote it to the study of birds, their habits and usefulness, and especially of the birds in the neighborhood of their school. September 28th, or the school day nearest that date, is Frances Willard Day, and one-fourth of it is set apart

by law for instruction in the history and benefits of the prohibition of the manufacture and sale of intoxicating liquors in the United States, and for appropriate exercises relating to that subject.

315c. School Age.—The Constitution says “The General Assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in the State between the ages of six and twenty years.” Persons between the ages of six and twenty years are said to be of school age.

315d. Subjects to be Taught.—The Constitution does not say what subjects shall be taught in the public schools, nor has the Legislature done so. Nor does the Constitution or the statutes say that the books used shall be printed in the English language. But the school laws are all built on the theory that the primary duty of a public school is to give instruction in elementary subjects, such as spelling, reading, penmanship, arithmetic, geography, grammar, history and civil government, and that if the district does not have money enough to provide for instruction in these elementary subjects and in higher ones the work of the school must be confined to education in elementary subjects; but they also contemplate that if there is sufficient money there will be a high school as well as elementary schools. And the laws wisely do not name the subjects that shall be taught in any school. They delegate that matter to its chosen officers who are experienced in education. They require the county superintendent to adopt a course of study for the schools of the county, and require that course to be followed by teachers and boards; and they require the county text-book commission to adopt text-books for use in all the schools of the county, except those in certain cities, and say that no other books shall be used as texts except those so adopted; and they require the State Superintendent to classify public high schools into first, second and third class, and to prescribe the minimum course of study for each, and he and the many local superin-

tendents working together have agreed upon the subjects that are to be taught and the amount of study that must be given to each in each high school in order that it may be classified as a first, or a second, or a third class high school.

315e. Textbooks.—A majority of the legal voters of any school district may at the annual or a special meeting authorize the board to purchase from its incidental fund all textbooks needed for use in the school and furnish them to pupils free of charge. The books so bought are the property of the district, and can be used by the pupils only in accordance with such regulations as the board may prescribe. There are many demands upon the incidental fund, which can never be large, and therefore there may not be enough money with which to buy all the books the school needs, and when that is the case the board must first supply the lowest grades and then the other grades in order until all the elementary grades are supplied before any books are bought for the high schools.

But there is another fund of which any school board may avail itself for that purpose. That is the county insurance fund, and it can be explained in a few sentences. The State levies a tax of two per cent on the premiums received by foreign insurance companies on policies issued by them to citizens of this State. One-half of that tax is annually turned over to the various counties, in the proportion that the number of children of school age in each bears to the whole number in the State. When a county's share is received, the county court is required to apportion to each incorporated city or town its share, using the same rule of apportionment (that is, each town gets such a proportion of the county's share as the number of school children in the town bears to the whole number in the county) and the balance is placed in the county treasury to be used as county revenue. The fund will be applied in that way unless the school boards avail themselves of their right under the present law to have it turned over to them to be used in the purchase of school books. If the

board of any school district certifies to the county court before the insurance fund for any year is distributed to the cities and the county treasury, that the board is furnishing text-books free of charge to the pupils in the first four grades, the court must apportion to that district its share of the fund, to be used in buying books for the school, and its share will be such a part of the entire amount apportioned to the county as the number of children of school age in the district bears to the whole number in the county. Thus the entire county insurance fund may be applied to purchasing text books for use by the pupils of the school districts of the county; and as it annually amounts to over \$400,000, or about 46 cents for each child of school age in the State, it is sufficient in the course of two or three years, together with so much of the incidental fund as can be spared to that purpose, to purchase what text books the pupils of a district will need.

315f. Libraries.—The school board of every district is required to make some provision for a school library. In cities having between five and one hundred thousand inhabitants the board may spend from two hundred and fifty to twenty-five hundred dollars each year in establishing and maintaining libraries and public parks and play grounds for the use of the school children. In all other districts the board must spend each year not less than five nor more than twenty cents for each child of school age in the district in buying suitable books for a school library, including supplementary readers and reference books; and the selections are made from a list of books recommended by the State Library Board, consisting of the Superintendent of Schools and four other persons appointed by the State Board of Education. A part of the books listed by the board must be such as will supplement the regular schoolroom work of teacher or pupils in reading, literature, history, geography and nature study, or practical agriculture. After one hundred volumes have thus been purchased books other than those selected by the State Library

Board may be bought. Over ninety per cent of all the schools in the State now have libraries, and the number of books in them is over a million and a half, and that number is increasing at the rate of more than a hundred and fifty thousand volumes a year, and, what is still better, the books now being purchased are of a better quality and kind and more likely to inspire a love for reading and a thirst for useful knowledge.

315g. Compulsory Attendance.—The law requires all children between the ages of eight and fourteen years to be sent to some school unless there is good reason why they should not be compelled to attend. The school need not be a public one; but unless children of that age attend a parish or parochial or other private school, or receive regular daily instruction at home equivalent to that received by children of like age in the public school, they may be compelled to attend a public school. But there are reasonable exceptions to the rule: if the child is sick, or is mentally or physically afflicted, or has completed the common school course, or there is no school within two and a half miles of the child's residence, or if the child's parents or guardian through extreme poverty is unable to provide proper clothing for the child, the rule compelling the child to attend cannot be enforced. The school board in every district having more than one thousand inhabitants has power to employ an attendance officer to see to it that every child who has no such excuse is compelled to attend some school; and parents whose children of that age have no such excuse are liable to be punished in the courts if they do not send them to school.

The law compelling children to be sent to school is meant to complete what are called the child-labor laws. No child under the age of fourteen years is permitted to work at any gainful occupation except at agricultural pursuits or in domestic service; and no child under the age of sixteen years is permitted to work in a hotel, or concert hall, or wholesale drug store, or a pool or billiard hall, or a factory using dangerous

machinery or poisonous acids or explosives, or a brewery or any other place where alcholic liquors are manufactured or sold, or in operating any automobile or motor truck, or in any other employment dangerous to the lives or injurious to the health or morals of children; and no child whose age is between fourteen and sixteen years can be permitted to work in any other place unless there is produced an employment certificate obtained from the superintendent or other proper officer of the school certifying that the child has regularly attended some school and is able to read and write simple sentences in the English language. The principle upon which these laws are founded is that children are entitled to their childhood, and their lives must not be embittered or their bodies dwarfed or crippled by being forced to work in places in which only persons of mature years and fixed morals and sober thoughtfulness can work with safety; and, the State having shut them out of such places, it is under obligation to require them to attend school and receive an education that will prepare them for such employments or other useful pursuits.

315h. Vocational Training.—In 1917 Congress inaugurated a plan for vocational education in the public schools. The plan contemplates that the Government will co-operate with the States in preparing teachers to give instruction in agriculture, trade, industry and home economics and in paying the salaries of teachers of those subjects. The Congress set aside a certain amount of money, consisting of a half million dollars for the first year and increasing each year for three years, after which it is to be one million dollars annually, to be used in preparing and training teachers to give the most valuable instruction in those subjects. It also set aside a larger amount, beginning with a half million for the first year and increasing each year for eight years, after which it is to be three million dollars a year, to be used in paying the salaries of teachers, supervisors and directors of agricultural subjects, and an equal sum to be used in paying the salaries of teachers

of trade, home economics and industrial subjects. The money is to be used exclusively for those purposes. It is to be distributed among the states in proportion to population—that for education in agriculture in the proportion that the rural population of a state bears to the rural population of all the states, and that for instruction in trades, industries and home economics in the proportion that its urban or city population bears to the urban population of all the states. To receive its share for either purpose a state must provide an equal amount for the same purpose. The cost of instruction in other subjects, necessary for a well-rounded course of training in any of these vocational subjects, must be borne by the state or local boards, and they must also provide the necessary school house and equipment. Missouri was the first State in the Union to accept the plan. The General Assembly empowered the State Board of Education to arrange for the training of teachers in these various subjects, to prescribe the studies to be pursued in the schools, and to fix the requirements which a school must meet in order to have the benefit of the fund. Teachers are trained in the Normals, the University, or in the high school of a city having seventy-five thousand inhabitants. The controlling purpose of vocational education is to fit young persons for useful employment. In agricultural subjects the education is designed to meet the needs of persons over fourteen years of age who are preparing themselves to become efficient farmers, and the school giving the course must provide for actual practice in agriculture on a farm for at least six months in each year. The education in trade, industry and home economics is designed to meet the needs of persons over fourteen years of age who are preparing for a trade or industrial pursuit; the school giving the instruction to persons who have not entered upon such employment must require that at least half of the time of such instruction be given to practical work in a useful or productive pursuit; and at least one-third of the moneys appropriated to pay the

salaries of teachers must be applied to part-time classes for workers under eighteen years of age who have entered upon employment and desire to enlarge their civic and vocational knowledge, the course provided for them being not less than 144 hours of class-room instruction per year, and there may be an evening industrial school in which the instruction is supplemental to the daily employment of students over sixteen years of age. A school board may furnish a course in agriculture alone, or in trade, industry or home economics alone, or it may furnish a course in both branches of study; but in order to receive from the State, and through it from the Federal Government, one-half the teachers' salaries, it must provide the other half.

316. Taxation and Length of School Term.—It is the policy of the law to maintain a school for at least eight months each year in each school district, and whether or not there will be a longer term often depends on the voters themselves. The taxpayers in each district are by law compelled to submit to a tax of forty cents on each hundred dollars of the assessed valuation of all property in the district, for employing teachers and paying the incidental expenses of the school, unless a less tax rate, together with the district's share of the various public school funds and the money left over from the previous year, will be sufficient to maintain a school for eight months. If a less rate, together with these other moneys, will yield enough to maintain an eight months' term, the board may make the tax rate any sum it pleases less than forty cents. The board is bound to levy a rate of forty cents if that sum is necessary to maintain an eight months' school. And the board can levy forty cents, without consulting the taxpayers, even though that rate would provide for a nine or ten months' term. But it cannot exceed that rate unless a majority of the taxpayers authorize it to do so, and then it must fix the rate at such sum as they direct.

This rate of forty cents applies to all districts in the State except in those cities having one hundred thousand inhabitants or more, where the rate is sixty cents on the hundred dollars' valuation instead of forty.

These are the rates that the boards may fix without consulting the taxpayers, but in all rural districts the rate may be increased to sixty-five cents on the hundred dollars' valuation by a majority of the tax-paying voters, and in all city or town districts to one hundred cents. These are the tax rates for "school purposes," which mean the employment of teachers, paying janitors, buying fuel, and other "incidental expenses." The money raised for school purposes can not be used for paying bonds or other permanent debts.

But even these maximum rates do not afford sufficient funds to maintain a school for eight months in some districts. When that is the fact the law makes provisions for State aid; but the State requires the district to do its best towards raising the necessary funds before it will furnish such aid; it requires the voters of the district to authorize a levy of the highest rate of taxation for "school purposes" permitted by the Constitution. If the voters authorize a tax levy of sixty-five cents on the hundred dollars of valuation in a common school or rural consolidated district, or one of one hundred cents in a city or town district, and the amount of money produced by such levy, together with the district's share of the public school funds and the money on hand, is not sufficient to pay a teacher holding a third grade certificate forty dollars a month for eight months, or fifty dollars per month to a teacher holding a second grade certificate, or sixty dollars per month to one holding a first grade certificate, or any less salary, the State Treasurer will turn over to the board a sufficient amount to make up the deficiency and enable it to maintain a school for eight months, but usually not to exceed two hundred dollars for any one year, unless it employs more than one teacher.

317. Taxation for School Houses.—Any school district may contract a debt for school houses, furniture or building sites. And the property within the district must be taxed to pay that debt. And in addition to the tax to pay that debt, the property within the district may be further taxed to create a fund to build other houses. But the debt of a district can at no time be increased if that then existing equals five per cent of the assessed valuation of all property within the district.

Nor can any district create a debt until two-thirds of the qualified voters of the district voting at an election authorize it. The vote may be taken at an annual school meeting or a special election, but in either case two-thirds of the voters voting at the election must vote "for the loan" before it can be legally charged against the district. If that is done, then thereafter the school board must annually levy such a tax as will pay the interest as it accrues, and it must also levy such a tax as will pay the debt itself within twenty years.

But after having created a debt equal to five per cent, the patrons of a school may yet want more school house room. Suppose after the district has voted a loan equal to five per cent and built a school house, the school house burns down without insurance; its taxpayers of course must be taxed to pay that loan. Or suppose the voters wish to build a school house, but do not wish their district to go in debt for it; or suppose after authorizing a loan they find that it will not build quite so good a house as they need. In any such case, a fund for building purposes may be created when two-thirds of the qualified voters of the district vote for a tax for that purpose, and there is no limit to the tax that may be levied for such purpose, but the tax can be voted for only one year at a time, but may be voted each succeeding year. It can be levied for no year unless two-thirds of the voters authorize its levy for that year. But the tax to pay a loan, when once authorized, must be levied by the board each year until the entire debt is paid.

Thus we see that the rate of taxation for current school purposes will not exceed sixty cents on the hundred dollars of the assessed value of property in districts composed of cities having one hundred thousand inhabitants, and forty cents in all other districts, unless a majority of the voters who are taxpayers authorize a higher rate; but those rates for those purposes may be increased to one hundred cents in cities and towns, and to sixty-five cents in other districts. And for the purpose of erecting buildings in any district, the taxes may, by two-thirds of the qualified voters, whether taxpayers or not, be increased for any one year to any rate they may determine upon; and if two-thirds of the voters have authorized the board to issue bonds to be used in erecting school houses or other buildings, an additional tax sufficient to pay the annual interest on those bonds and at least one-twentieth of the bonds themselves must be levied each year.

318. Power to Fix Tax Rate.—The power given to a majority of the taxpayers of a district who are legal voters to determine what shall be the tax rate for school purposes is unusual in Missouri government. It is the only case in which the taxpaying voters have the right to say what the tax rate shall be. In county government, the rate of taxation for current county expenses is fixed by the county court, but it cannot exceed certain maximum rates. In city government, the rate is fixed by the council and mayor, and can be fixed at any rate not in excess of a certain maximum rate prescribed by law. But in school districts the board can fix the tax rate at a certain minimum rate prescribed by law, but a majority of the taxpayers who are voters, if they choose, may fix upon a higher rate for "school purposes," and two-thirds of the voters may fix an unlimited rate for building purposes for any one year. These provisions show how greatly concerned the State is in education. The law puts it largely in the hands of the taxpaying voters to say how efficient their school shall be. If the school is not a good one the taxpayers, who

refuse to vote a tax large enough to maintain an efficient school, are largely responsible.

319. The State Board of Education is composed of the Superintendent of Schools, Governor, Secretary of State and Attorney-General. The Constitution vests in it "the supervision of instruction in the public schools," but it in fact exercises very little supervision over them except in the matter of vocational training, because the laws have imposed on other officers the actual work of conducting schools and giving instruction in them. But it does other things of value to the schools. It looks after the swamp and other lands which have been granted to the counties in which they lie to be sold for the benefit of public schools, and sees to it that when the lands are sold so much of the money as belongs to the schools is turned into the school funds. It directs the investment of the Public School Fund and the Seminary Fund (described in succeeding sections) and sees to it that the incomes arising from them are applied for the purposes for which they were created, and that the public schools receive each year the moneys appropriated by the Legislature for their support. It also appoints one member of the text-book commission of each county, and four members of the State Library Board.

320. School Funds.—There are several kinds of permanent school funds created by law for the purpose of supporting state schools. The local fund has already been discussed; it is the fund raised by direct taxation upon the property of the taxpayers in each district. But in addition to that there are the Public School Fund, the Seminary Fund, the County Fund, the Township Fund and special district funds—all permanent funds.

321. The Public School Fund.—There is a permanent endowment of the public schools of the entire State which is by the Constitution called the "Public School Fund." It amounts to more than three millions of dollars, and only

the annual income therefrom can be used for the support of the schools. It had its origin in an act of Congress dated June 13, 1812, the passage of which was secured largely by Thomas F. Riddick, an honored citizen of Missouri, who rode on horseback all the way to Washington to persuade Congressmen to support the measure. That act and other subsequent acts of Congress gave to Missouri certain saline and swamp lands lying within her borders, to be sold and the proceeds to be turned into the State Treasury, to be invested by the State and the income to be used for public schools. To this fund have also been added certain fines and forfeitures, and unclaimed escheats. Sometimes it occurs that persons without known or ascertainable heirs die without wills, leaving estates. The proceeds of such estates are turned into the State Treasury, and if not claimed within twenty years by some rightful owner are transferred to the Public School Fund.

322. The Seminary Fund is another state school fund, the proceeds of which are applied to the support of the State University, which has been established at Columbia for the purpose of affording the highest education in collegiate learning, in the law, in medicine, in electrical and civil engineering, in scientific agriculture, and in other branches of useful study. This fund amounts to about one million two hundred and fifty thousand dollars. It began in the grant by Congress in 1818 and 1820 of 72 sections of unentered land lying in Jackson, Lewis, Scott and other counties. These lands, which in the aggregate amounted to two whole townships, were sold and the proceeds, amounting to about one hundred thousand dollars, were used to provide an endowment for the University. In 1862 Congress gave certain other lands in the State in aid of education in agriculture, and these were sold about 1883, and nearly four hundred thousand dollars more were added to the Seminary Fund. Then in 1891 Congress reimbursed Missouri for the

money that had been raised from the citizens of this State (\$646,958.23) by the "direct tax" mentioned in section 62, and this was added to the Seminary Fund. Other small sums have been added from time to time, until the entire Seminary Fund has risen to what has already been stated. It is a permanent endowment for the State University, and the School of Mines and Metallurgy, which is a part of the University.

324. How Invested.—The Public School Fund and the Seminary Fund have been accumulating for almost a century. The Constitution of 1875 required them to be invested in the bonds of the State or of the United States, and they were invested in State bonds. But the Constitution also required all State bonds to be gradually paid, and required that an annual tax on all property in the State should be levied to raise money with which to pay them, and by 1902 all of them except those belonging to these two funds had been paid. What was the State to do in that situation? It could have gone ahead levying the tax until it had an amount of money in hand equal to the par value of the bonds, and have turned over that amount of money to the State Board of Education and taken up and destroyed the bonds belonging to these funds. But what would the board have done with the money? If that had been done it would have been compelled to invest it in United States bonds, which bear not to exceed three per cent, and the State bonds in which these funds were invested bore six per cent; that course would have meant that the public schools would each year thereafter receive about \$90,000 less and the State University about \$37,500 less than they had been receiving from these funds. That course was not pleasing to the people of the State. An amendment to the Constitution therefore was proposed and overwhelmingly adopted. It contemplated that the bonds in which the funds were invested would not be paid, but (being in possession of the State) would be cancelled, and in lieu of them an equal amount of certificates would be signed by the

Governor and turned over to the State Board of Education, and that they would bear the same interest, at least for twenty years, that the bonds had borne, and that a tax of three cents on the hundred dollars' valuation, or so much of it as might be needed, should be annually levied to pay that interest, and when paid so much of the interest as pertained to the Public School Fund should be distributed to the public schools and so much of it as pertained to the Seminary Fund should be turned over to the State University.

The Public School Fund and the Seminary Fund are therefore invested in "certificates of indebtedness" signed by the Governor and issued to the State Board of Education. These certificates are simply non-negotiable State bonds. They are simply debts which the State owes those funds, and therefore the Constitution calls them "sacred obligations of the State." They express an agreement on the part of the State to raise by means of taxation the annual interest they bear, and to pay the principals thereof whenever the people by a change in their Constitution shall direct some other way in which to invest them. Invested in this way the State itself is the debtor or the borrower of the money belonging to these funds, and invested in this way they can be wasted or lost only when the people of the State lose their sacred honor.

These funds are still slowly growing; some money is added to them every year; and now whatever amount belonging to them accumulates in the State Treasury is invested in county, city, school district or drainage district bonds.

325. Legislative Appropriations.—The Constitution provides that at least one-fourth of the ordinary State revenues shall be appropriated for the use of public schools. Since 1887 the Legislature has appropriated one-third of the revenues to this purpose. The entire amount annually turned over to the schools from these appropriations and from the interest on the State Public School Fund is about two million dollars, and is more than two dollars for every child of school

age in the State. The large part of this money is apportioned to the various counties by the State Superintendent of Public schools according to the number of teachers and the numbers of days all children have attended school during the past year, and each county's share is by the county clerk divided up among the school districts of the county in the same proportion, and the money turned over to the county treasurer and by him paid out to teachers. By this means the State aids the whole State to have public schools, but especially counties of small taxable wealth.

326. County School Fund.—There is also in each county a County School Fund which is loaned and the interest used to aid the public schools of the county. It is now derived almost entirely from fines, penalties and forfeitures. The net proceeds of fines imposed in the circuit court and in magistrates' courts go into this fund, as do the amounts realized from bonds forfeited to the State by those persons accused of crime who escape after having given bail. In some counties a part of this fund has been derived from the sale of swamp lands lying therein, which were granted to the State by Congress, and then to the counties by the General Assembly, to be sold and the net proceeds added to the public school fund of the county.

The County School Fund is loaned by the county court on unmortgaged real estate worth at least twice as much as the amount loaned, and the interest as it is paid is apportioned to the various school districts of the county in proportion to the number of children of school age in each. The aggregate of all the county school funds of the State is nearly six million dollars, and is increasing at the rate of nearly one hundred thousand dollars a year.

327. Township School Funds.—In each county there is also a separate Township School Fund. The laws of Congress and of Missouri required that section 16 of every Congressional township be sold and the money added to a town-

ship school fund. The money is loaned by the county court, just as is the County School Fund, and the interest as it is paid is distributed among the school districts of each township in proportion to the number of children of school age in each. The aggregate of these funds in all the counties is more than two million five hundred thousand dollars.

328. Special District Funds.—The early French towns in this State, such as St. Louis, St. Charles, Carondelet and others, always had a common field which had been used by all the inhabitants of the town for pasture and other purposes. That of St. Louis, for instance, was called the Grand Prairie Common Field. By an act of Congress, dated June 13, 1812, these commons were given to the inhabitants of the town to which they belonged "for the support of schools," and by subsequent acts of the Legislature and in some cases by vote of the people also, these lands were sold and a part or all of the moneys turned over to the public school district of the towns. Besides, special gifts or bequests have been made to some districts. These funds constitute, in part, what is classed as the Permanent Special District funds. They amount altogether to about two million six hundred thousand dollars. At least two millions and a half of that amount belong to the school district in which St. Louis is situated, and a part of it was obtained from the sale of a part of section sixteen of the township covered by the city, and by fines and forfeitures. But as that city is a county within itself and there is there no longer a Congressional township, the County Fund, the Township Fund and the Special District Fund are all consolidated into one, and is usually classed as a Special District Fund, although it has, in part, been created in the same way that the County Fund and Township Fund have been in other counties.

329. Public School Endowment.—The Public School Fund, the County School funds, the Township School funds and the Special District funds amount to more than fourteen

million dollars, and they yield over eight hundred thousand dollars annually; and when to this income are added the one-third of the State revenues and the other sums appropriated by the Legislature, the entire amount which the public schools receive each year, in addition to the taxes raised in the various districts, is considerably more than two million dollars.

330. Cost of Public Schools.—In addition to the money appropriated by the Legislature and the income from the various school funds, the school boards raise over thirteen millions annually for "school purposes" by local taxation, and over three millions more for paying debts and other "building purposes." The entire cost of the public schools for the year ending June 30, 1915, was \$19,700,626. The annual cost of the University and the six Normal Schools is over one million more.

In 1915 there were 922,831 children of school age in the State, and almost exactly four per cent of them were colored. There are 9792 school districts, and nearly twenty thousand public school teachers, and of the districts six hundred have high schools, in which nearly two thousand high school teachers are employed.

331. State Normals.—For the purpose of educating teachers the Legislature has established five Normal schools for white persons—at Kirksville, Warrensburg, Cape Girardeau, Springfield and Maryville—and one for negroes, Lincoln Institute, at Jefferson City. Each of these schools is managed by a board of regents appointed by the Governor, and these boards elect a faculty or a set of skilled teachers.

The permanent school funds of the State of all kinds on June 30, 1915, were as follows:

Amount of State School Fund.....	\$3,159,281.14
Amount of Seminary Fund.....	1,280,382.85
Amount of County School Funds.....	5,919,211.65
Amount of Township School Funds.....	2,514,123.27
Amount of Special District Funds.....	2,620,624.32
Total of all funds.....	\$15,493,623.23

The number of students in these schools is large. The schools are supported by the State out of money appropriated for that purpose by the Legislature.

331a. Teacher-Training.—In furtherance of the purpose of training and educating teachers for elementary and rural schools, and in order that there may be a school close to their homes where they may receive such preparation, the State appropriates a small amount of money, usually seven hundred and fifty dollars a year, to such high schools of the first class as are approved by the State Superintendent and maintain a teachers' training course; but no school can have such aid unless a class of ten teacher-training students was maintained during the preceding semester. The money so appropriated must be used in paying the salaries of teachers in the eleventh and twelfth grades. The State Superintendent prescribes the conditions for admission to the teacher-training classes, and the studies to be pursued. The State also aids the school boards in St. Louis and Kansas City to maintain a teacher-training school for the training of teachers for the elementary schools of these cities, but in order to obtain the aid the course of instruction must include a two-year professional course in advance of a four-year standard high-school course.

332. Schools for Colored Children.—The Constitution says: "Separate schools shall be established for the education of children of African descent." No colored child can attend a school established for the education of white children; nor can a white child attend a school for colored children. The school for colored children must be of the same length as that for white children in the same district, and their school must give the same advantages and privileges as are provided in schools of corresponding grade for white children in the district. Their teachers are paid in the same way, out of the same fund. And if there are fifteen colored children of school age in the district a school must be provided for them by the school board, or the district will

lose its part of the public school funds for the next year; and if there are a less number, they can attend any school for colored children in the county and the board must pay their tuition.

333. County Superintendent.—In each county there is a county superintendent of public schools, elected by the qualified voters at the annual school meetings in 1915, and every four years thereafter, for a term of four years. He is paid a salary varying from seven hundred to fifteen hundred dollars a year, the amount depending on the population of the county. Four hundred dollars of the amount is paid by the State, and the rest by the county. He has general supervision over all the schools of the county, except town or city schools employing a superintendent who devotes at least one-half his time to the direct work of supervision. He is required to visit each of such schools at least once a year, and to give such aid as he can, both to the teacher and board, in bettering the school work and conditions. He holds annually not less than six public meetings in different places in the county for discussing educational matters and counseling teachers and boards, and teachers and directors are required to attend these meetings. One of these meetings is held, for two days, at the county seat, in July or August, or just before the beginning of the fall terms of schools, at which teachers and directors receive instruction from him and other trained schoolmen in methods of teaching and school management. He adopts a course of study for these schools, and a plan of grading them, and arranges a system of final examination and graduation of pupils who have completed the course of study prescribed by the State for rural schools.

He conducts examinations, for two days each, three times a year, for those wishing certificates authorizing them to teach in the public schools. The examinations are public and written. The questions to be answered are pre-

pared by the State Superintendent, and the papers of applicants for a first grade certificate are graded by him, as are also, upon request, the papers of those desiring second or third grade certificates, but unless such request is made they are graded by the County Superintendent. In every case, whoever grades the papers, the latter officer grants the certificate, but he can not grant it unless the grades reach certain percentages fixed by the statute, nor unless the applicant is of good moral character. There are three grades of certificates, first, second and third, the third grade being valid for one year and the second grade for two years in the county in which issued, and the first grade for three years anywhere in the State. To obtain a third grade certificate the applicant must obtain an average grade of 80 per cent in spelling, reading, penmanship, language lessons, geography, arithmetic, English grammar, United States history, civil government (including the government of Missouri), agriculture, pedagogy, and physiology and hygiene, with special reference to the effect of alcoholic drinks and stimulants and narcotics generally upon the human body. To obtain a second grade certificate the applicant must obtain an average grade of 85 in the foregoing subjects and algebra and literature. To obtain a first grade certificate the applicant must obtain an average grade of 90 per cent on all the foregoing subjects, and upon one branch of history, either ancient, mediaeval or modern, or English, and one branch of science, either physical geography, physics or elementary biology, and must have had eight months' experience in teaching. In addition, after September 1, 1916, the applicant for a first or second grade certificate must have completed three years, and after September 1, 1918, four years, of the course of study prescribed for an accredited high school, or an equivalent course in some college or other school.

For some years prior to 1909 there could be no county superintendent until a majority of the voters of a county had voted to have one, and not many counties so voted. But in 1909 the Legislature created the office of county superintendent, and required him to be elected and to have an office at the county seat, just as other county officers. The office has proved to be one of great public benefit. The superintendents have become the source of great inspiration among the people along many useful lines. Not only have teachers been helped, not only have school patrons been induced to take a greater interest in their school and to bring about healthier and more comfortable conditions in the school house and grounds, but a larger community spirit is awakening, and whole sections of a county and in some cases a whole county are uniting to make rural and village life more profitable and inviting.

334. Text-Book Commission.—There is also a county text-book commission, composed of the County Superintendent, one member appointed by the county court, and another appointed by the State Board of Education. This commission adopts the text-books to be used in the schools of the county, and contracts with publishers for the sale of such books, for a period of five years, at designated prices, and then no other book can be legally used in the county while such contract lasts. The adoptions of the county commission do not apply to all the schools of the county; they apply to all except those in cities and towns having one thousand children of school age or a high school affiliated with the State University.

335. Non-Sectarian Education.—The Constitution does not permit the public school funds to be used in aid of any church school. There is a great number of such schools in Missouri. The various churches have established colleges, seminaries, academies and other schools, and the people who contribute to them, even though they send

their children to them, must also pay their share of taxes for the support of the public schools, and the taxes they pay for that purpose cannot be used to support these church or private schools. The Constitution says that "neither the General Assembly, nor any county, city, town, township or school district shall ever make an appropriation, or pay from any public fund whatever anything in aid of any religious creed, church or sectarian purpose, or to help to support or sustain any private or public school, academy, seminary, college, university or other institution of learning, controlled by any religious creed, church or sectarian denomination." This language prevents the use of public school moneys for any school except for such as the State has directed to be established.

336. Exempt From Taxation.—But it is not the policy of the State to tax church or private schools, for any purpose. The Constitution says that lots to the extent of one acre and the buildings thereon, within any incorporated city or within one mile thereof, if "used exclusively for religious worship, for schools or for purposes purely charitable" are exempt from taxation of all kinds; and lots to the extent of five acres one mile or more distant from such city, when used for such purpose, are exempt also.

The endowments of colleges and of other church or private schools, if they consist of money which is loaned, are usually not taxed, but so much of such endowments as is invested in lands is taxed.

Questions on Chapter VIII.

1. What is the purpose of education? (310)
2. Why were public schools established? (310)
3. Why is the State justified in laying school taxes? (310)
4. How are the state schools divided? (310)
5. When may a new district be organized? (311)
6. What officers has each common school district? (311)

7. What is a consolidated school district? (311) A town school? (311) A city school? (311)
8. What are the first three powers of an annual school meeting? (312)
9. What powers has the meeting in reference to a school house? (312)
10. What are the terms and qualifications of a school director? (313)
11. Name the first duty of the school board. The second. (314).
12. Who employs teachers? (314) When is the contract binding? (314)
13. Repeat the fifth duty of the board. (314)
14. Are these the main powers and duties of all boards? (314)
15. Discuss a consolidated school district. (314a)
16. When will the State aid it? (314a)
17. Discuss city and town schools. (315)
18. To what extent, why and when does the State aid a town or city school? (315-1)
19. Is the school district a part of the city government? (315-2)
20. How about school boards and elections in large cities? (315-3)
21. What additional powers have these boards? (315-3)
22. What is the school day, week and month? (315a)
23. What is Missouri Day? Arbor Day? Bird Day? Frances Willard Day? (315b)
24. What is the school age? (315c)
25. Does the Constitution or law name the subjects to be taught or the books to be used? (315d)
26. On what theory are the school laws built? (315d)
27. Who name the subjects to be taught and arrange the courses of study? (315d)
28. How may free text-books be obtained? (315e)
29. What provision for libraries, parks and play grounds may a city school board make? (315f)
30. What provisions for libraries must all other districts make? (315f)
31. How are the books selected (1) at first and (2) later? (315f)
32. Discuss compulsory attendance. (315g)
33. Discuss child-labor laws. (315g)
34. Upon what principle are these laws founded? (315g)
35. Discuss vocational training (315h).
36. What length of term does the law seek to compel? (316)
37. To what rate must the taxpayers submit and when? (316)
38. When may the board fix a less rate? (316)
39. When is the board bound to levy forty cents? (316)
40. When can it exceed that rate? (316)

41. To what districts does this forty-cent rate apply? (316)
42. To what rate and for what purposes may these rates be increased? (316)
43. What is meant by school purposes? (316)
44. When and how does the State help a district to maintain an eight-months' school? (316)
45. For what purposes may a district create debts? (317)
46. When only can a debt be created? When and how must it be paid? (317)
47. How and to what extent may a building fund be created for a year at a time? (317)
48. Can you sum up in a few sentences what is said of the various tax rates? (317)
49. What is said of the power of taxpayers to fix school taxes? (318)
50. Discuss some duties of State Board of Education. (319)
51. Name the various school funds. (320)
52. Whence came the money that constitutes the Public School Fund? (321) How is the income applied? (321)
53. Give three sources from which the Seminary Fund was derived. (322) How is the income applied? (322)
54. Read section 324 and then state how the Public School Fund and the Seminary Fund are invested.
55. How much of the State revenues are appropriated to public schools? (325) How is it apportioned among the schools? (325)
56. How is the County School Fund derived, loaned and apportioned? (326) How is it increasing? (326)
57. Discuss the Township School Funds. (327)
58. Read what is said of Special District Funds. (328)
59. How much do the schools receive above local taxes? (329)
60. Read what is said about the costs of schools. (329)
61. How many State Normals and what are they for? (331)
62. What further is done for training teachers? (331a)
63. What about schools for colored children? (332)
64. Mention some of the duties of County Superintendent. (333)
65. Read what is said about teachers' certificates. (333)
66. Can the County Superintendent be a woman? (333)
67. What are the duties of the Text-Book Commissioner? (334)
68. Can public school moneys be used to aid church schools? (335)
69. What portion of property of church schools may be taxed? (336)

CHAPTER IX.

ELECTIONS.

337. Purpose of Elections.—Americans believe in the rule of the people. It is an underlying principle in America, one that no man has ever been able to withstand, that the will of the majority shall control; and in order that that will may be known, the State has provided for elections at which each citizen may express by his ballot his choice for candidates or for a political principle. As this is the people's government, supported by taxes collected from the people, the people should have a voice in choosing the officers who are to represent them.

338. Time of Holding Elections.—The laws of Missouri require a general election to be held throughout the State on the first Tuesday after the first Monday of November in each even-numbered year for the election of all State and county officers, judges, members of Congress and State Senators, whose terms are about to expire. The Governor, Secretary of State, State Auditor, State Treasurer, Attorney-General, and at least one judge of the Supreme Court, and one judge of each of the courts of appeals are elected on the same day that Presidential electors are chosen (leap years), and Representatives in Congress and in the General Assembly, and half the State Senators are elected at the same time. Two years later the Superintendent of Public Schools, at least one Supreme Judge, one-half of the State Senators, and Representatives in Congress and in the General Assembly, are elected. And at one or the other of these general elections county officers, and once in six years judges of the circuit court, are elected; and at two of every three general elections a United States Senator is elected. It should be observed that nearly all the State officers are elected at the same time

Presidential electors are chosen; and that at the general election two years later the most of the county officers are elected.

339. Precincts.—In order that each citizen may have full opportunity to cast his ballot, the law provides that the county court of each county shall, several weeks before an election, designate a voting place in each township of the county, and more than one if the convenience of the inhabitants may require it. This voting place is called a precinct. The sheriff is required to provide two ballot boxes for each precinct, and to turn them over to the constable, who on the morning of the election delivers them to the judges of the election.

340. Judges and Clerks.—The county court is also required to appoint for each precinct six judges of election, who in turn appoint four clerks. Three of the judges are taken from the political party that polled the largest number of votes at the last general election, and three from the party that polled the next highest number. Two of these judges, one from each party, write their names or initials on the back of the tickets and deliver one of each party to each voter, who takes them to a booth provided for the purpose, where he can be free from observation. There he folds the one he wishes to vote apart to itself, so as to expose the initials or names of the judges thereon, and then hands it to one of two other judges called "receiving judges." If the judges deem him a legal voter this ticket is deposited in the ballot box, and his name and the number of his vote are entered in the two poll-books by the clerks, and the number of his vote is also written on this ticket. The other tickets which were handed to him he must fold together, and return to the same judges, who place them in another large box, where they are kept until after the election is over and then destroyed. After the voting has continued in this way for an hour the other two judges, called "counting judges," and two clerks

begin to count the votes that have been cast, and while they are doing this the election continues, the accepted tickets or votes of other persons being deposited in the other ballot box. At the end of the second hour the counting of the tickets deposited in the first ballot box should be completed, and that ballot box returned to the polling place. Then the counting judges take the second ballot box and proceed to count the tickets in it, and while they are doing so tickets of other voters are placed in the first ballot box. Thus the voting and counting continue throughout the day.

When the polls are closed and all the ballots counted, the number of votes cast and the number for each candidate are entered in each poll-book, and these are signed by the judges and attested by the clerks, and the result of the election is publicly proclaimed. One of the poll-books is transmitted to the county clerk within two days, and the other is retained in the possession of the judges of election, open to the inspection of all persons.

341. Secret Ballot.—No one has any right to know how any man votes. Safeguards have been provided to secure a secret ballot, in order that the voter may be relieved of any intimidation, and be entirely free to vote as he desires. No one is allowed to attempt, in anywise, to influence his vote within the polling place. No one is permitted to go with him to the booth where he prepares his ticket; if he cannot prepare it himself it must be done by two judges of different political parties, in his presence, not in the booth, but at the place within the polls where the judges usually stand and hand out the tickets. No one is permitted to unfold or see the voter's ticket before it is placed in the ballot box, and after it is placed there only the counting judges and clerks (who can not know whose ticket it is) are permitted to unfold it, in order to properly count it, and when that is done it is securely locked in a box, and can never be examined by anyone except by order of a court, or of some other authorized

officer, in a contest over the result of the election. Before the judges enter upon their duties at an election, they are required to take an oath that they will not disclose how any voter may vote, unless required to do so as a witness in a proper contest proceeding.

342. Ballots.—The tickets for a general election are furnished by the county. The county clerk superintends the printing of them and delivers them to the judges of election, and they are prohibited from permitting anyone to get possession of a ticket except a voter ready and desiring to vote, and he cannot take it from the polls. In order to have an entirely secret ballot it is necessary that the county furnish the tickets, and that the greatest precaution be taken that no person except those lawfully entitled to them at any time before the close of the election obtains possession of them. Each party has a ticket of its own, and one ticket of each party is handed to the voter by the judges when he applies to them to vote. On each party ticket are the names of all the candidates of that party properly nominated for the various offices to be filled.

343. How Candidates are Nominated.—In former years each political party could nominate its candidates for office in its own way. But the law now requires all candidates for state, district or county offices to be nominated at a primary election to be held on the first Tuesday in August preceding the general election. All parties must nominate their candidates in that way and all on the same day. These primary elections are held in much the same way as general elections in November. There are the same precinct judges and clerks, appointed by the county court, and the county pays all costs of the election. There must be a ticket for each party, and on each ticket is printed the title of each office and underneath the title the names of all the candidates of that party for that office. Any candidate for a state or district office can have his name printed on his party's ticket

by filing a written declaration designating the office for which he is a candidate, and paying a certain sum of money to the treasurer of the party committee. Every legal voter in the State can vote at a primary election, but he can only vote his party ticket, and the judges of election give him only the ticket of the party he wishes to affiliate with. The candidate who receives the highest number of votes cast by his party for the office for which he was a candidate becomes the party's candidate for that office. The votes are counted by the judges of election, county clerk and Secretary of State in much the same way as are the votes cast at the general election in November.

Presidential electors are not nominated in this way. They are nominated by party conventions. Neither are candidates for city offices (except in the city of St. Louis) or school directors or county school superintendent nominated in this way. But all candidates for State offices, Senator or Representative in Congress, State Senator, Circuit Judge and all county officers elected in November, are nominated at this primary election.

344. Independent Voting.—But no person who takes part in any primary election or convention is required by law to vote his party ticket at the general election in November. He can vote for whom he pleases. The law requires a blank line to be left after each name on each printed ticket, and if the voter does not wish to vote for the man who bears that name, he can scratch out the name and write in that of any candidate on any other ticket, or that of a person whose name is not on any ticket.

345. Counting the Vote.—One of the poll-books of each precinct, certified to by the judges and clerks of the election, must be transmitted to the county clerk within two days after the election. Within five days after the election he and two justices of the peace, or two judges of the county court, cast up the number of votes polled at each precinct

in the county, as shown by the poll-books, and to each county officer receiving the highest number of votes he issues a certificate of election, and certifies to the Secretary of State the number of votes cast for State officers, judges, Presidential electors and Senator and Representatives in Congress, and that officer casts up the vote in all the counties for Governor, Lieutenant-Governor, Secretary of State, Auditor, Treasurer, Attorney-General, Railroad Commissioner, and Superintendent of Public Schools, and sends these returns to the Speaker of the House, who, in the presence and under the control of the Senate and the House, opens and publishes the same. The votes for candidates for all other state or district offices and for Congressmen are counted by the Secretary of State in the presence of the Governor, and to the person receiving the highest number of votes is issued a certificate of election.

346. Disposing of Ballots.—Each ticket offered to the judges of election by any person wishing it to be received as his vote, whether received and counted or rejected as illegal, is transmitted to the county clerk, along with the poll-book. He securely keeps the tickets, and is not allowed to read or examine them unless commanded to do so by some court or the Legislature, nor to permit any one else to do so. At the end of one year he destroys them. The rejected ballots are sent in, in order that the court may determine, in case of a contest, whether they were properly rejected or not, and if they were not direct them to be counted.

347. Hours of Voting.—The law requires that the polls shall be open at six o'clock in the morning and be continued open till seven o'clock in the evening, unless the sun shall set after seven o'clock, in which case they shall be kept open till sunset, except in cities having more than twenty-five thousand inhabitants. In them the election begins at six o'clock in the morning and continues to seven in the evening.

348. In St. Louis and Kansas City.—There must be one precinct in each ward in the city of St. Louis and Kansas City,

and as nearly as practicable one for every three hundred voters. By a law applicable to these cities only, the details of elections there are somewhat different from those in the rest of the State.

There is no county court in St. Louis, and hence the Legislature has enacted a law that election judges and clerks in that city shall be appointed by a board of four election commissioners, not more than two of whom belong to one political party. The commissioners are appointed by the Governor. Those belonging to the same party as the Governor choose from their own party two election judges and one clerk for each precinct in the city, and the other commissioners choose two judges and one clerk from their party, and these four judges and two clerks have charge of the registration of voters and elections at that precinct. And this board of commissioners adds up the votes cast at the various precincts in the city and certifies the result, just as the county clerks do in the counties.

There is a like board of election commissioners in Kansas City, with like duties to perform, also appointed by the Governor.

349. Registration of Voters.—In all cities of twenty-five thousand inhabitants voters must be registered before the election, and no person can vote there whose name does not appear on the registration books. The registration commences usually forty days before and is continued on various days to within a few days of the election. In cities having between twenty-five and one hundred thousand inhabitants the registration is done by a special officer denominated a registrar, elected by the people in each election district, and all the registrars in the city meet as a board of revision a few days before the election, and determine the right of any person to have his name enrolled who has been denied that right, and strike off from any registration book any name which is shown to have been wrongfully enrolled. In the

larger cities the registration is done by the judges of election and clerks, under the supervision of the election commissioners.

The registration of voters in cities is necessary to preserve the honesty of the ballot. There are always some legal voters living in such cities who are not known to the election judges, and they should be given ample time to show their legal right to vote before election day, and not have to run the risk of being challenged at the time they offer their ballots, when perhaps they could not readily bring forward persons who can establish their right to vote. There is also danger that "floaters" and "repeaters" may undertake to vote in such cities unless they are in some way headed off. "Repeaters" are men that try to vote at more than one precinct in the city. "Floaters" are persons hired to come from other states or counties and vote. Frauds of this kind are very much more likely to occur in cities than in small towns and rural counties where almost every one knows every legal voter in the township and the precinct to which he belongs. To prevent such frauds, voters in such cities are required to register some time before election, and in this way fraudulent voters may be discovered and the voting list purged of them.

350. Qualification of Voters.—Every male citizen of the United States (and every male person of foreign birth who may have declared his intention to become a citizen of the United States according to law, not less than one year nor more than five years before he offers to vote), who is twenty-one years of age, shall be entitled to vote, **except** (1) soldiers or sailors in the army or navy, (2) persons kept at a poor house or an asylum at public expense, and (3) any person convicted of a felony and not pardoned. But before a citizen twenty-one years of age can vote he must have resided in the State at least one year, and in the county or city or town at least sixty days, and he can vote only in the election district in which he resides.

350a. Absent Voters.—But provision is made by which an absent voter may cast his vote and have it counted in the precinct in which he resides. Any railroad trainman, or traveling salesman, or college student, or any other person who is unavoidably absent from the county of his residence on a general election day, if a qualified voter there, may appear at the polling place of the precinct in which he happens to be, provided it is some precinct within this State, and cast a legal ballot in the presence of the judges, who turn it over to the county clerk, who in turn sends it by mail to the county clerk of the county or board of election commissioners of the city where he resides, and on the day the clerk or commissioners canvass the votes sent in by the judges of election his vote is added and counted along with the others.

Questions on Chapter IX.

1. What is an underlying principle in America? (337)
2. Why are elections provided? (337)
3. When are general elections held? (338)
4. What is a precinct? (339)
5. Who provides the ballot boxes? (339)
6. Who appoints judges of elections? (340)
7. How many judges and clerks? (340)
8. Describe in detail the method of voting and counting. (340)
9. What is done when the polls are closed? (340)
10. What is said of a secret ballot? (341)
11. Can the judges honestly know how any one has voted? (341)
12. When only can that be revealed? (341)
13. Who furnishes the tickets? (342)
14. Why is it necessary for the county to furnish them? (342)
15. How are party candidates now nominated? What candidates are nominated in this way and what not? (343)
16. Who pays the expenses of a primary election? How are the votes counted? (343)
17. What provision is made for independent voting? (344)
18. Who counts the votes cast in the county? (345)
19. Does he use the ballots or poll-books for that purpose? (345)
20. Who gets the certificate of election? (345)
21. What does he do in reference to the vote for state officers, etc.? (345)

22. Who casts up the votes for those officers? (345)
23. What is done with the tickets offered to the judges of election? (346)
24. What are the hours of voting? (347)
25. How many precincts in St. Louis and Kansas City? (348)
26. Who take the place of county court in those cities? (348)
27. How are they chosen? (348)
28. Who casts up the votes cast in those cities? (348)
29. Where are voters registered? (349)
30. How is the registration made in cities having between 25 and 100 thousand population? (349)
31. By whom is it done in larger cities? (349)
32. Why does registration seem necessary? (349)
33. Who may vote in Missouri? (350)
34. How may an absent voter have his vote counted? (350a)

CHAPTER X.

TAXATION.

351. Importance of Subject.—Much has been said in previous chapters about taxation. It is the subject in which every citizen is constantly interested. It can never grow old while government lasts. Nor can it ever be said to be settled. A rate of taxation which was just ten years ago may be unjust in ten years from now, or a method of taxation which was once wise may no longer be wise.

352. Purpose of Taxation.—Taxes are the burden which the people bear for the support of government. In return for those taxes, the people should be given the best government that can be had for that amount of money. Money raised by taxation does not belong to the officers; it can be used by them only for the purposes for which it was raised. Of course, a part of it will be used to pay officers for the work they perform for the government, and that is just. Officers are necessary for the performance of the work which the people wish the government to do for them; they are the government's agents, its trustees, its representatives. Thus,

the teacher of a public school, the circuit judge, the Governor, are government officers, and much of the moneys raised by taxation may be consumed in paying them and other of the various officers of the government for the work they do for the government, but government does not exist simply to pay salaries to officers. The purpose of government is "to protect the people in their right to life, liberty and the pursuit of happiness;" to "promote the general welfare of the people," to maintain the public peace, to keep men from injuring each other, to establish law and order, to protect men in the peaceable enjoyment of their property and their personal rights. Every duty of government is comprehended in some one of these purposes, and the people are taxed to meet the government's expenses in carrying out these purposes. They cannot justly be taxed for any other purpose. But the government can act only through officers. A government could no more be maintained without officers than a large store could be conducted without clerks. But officers cannot justly be expected to leave their private business and perform for nothing the duties which the government imposes on them, and hence a part of the taxes must always go towards paying them for their services. But unless the office accomplishes some good purpose, unless it is in some way useful to the people, it should be abolished, and that much taxes saved to the people or applied in some other way.

So the questions of how much tax shall be levied, on what things, and how it shall be expended, are ever-present and every man who pays taxes is concerned in them.

353. Why the People are Taxed.—Taxes are collected for the support of the government. The government has no way of its own to make money. It cannot engage in farming or merchandising or other business for gain. It has no money except what it takes from the people.

354. Exemption From Taxation.—Certain property is exempt from taxation. No court house, no city hall, no

school house, no cemetery, no public street or road, is taxable; nor is any building belonging to any county or to the State or to the United States. Nor is any church or hospital or school or lodge building, used exclusively for religious or charitable or educational purposes, to the extent of one acre if located within any city, and to the extent of five acres if situated outside of the city, taxable. But unless used exclusively for some one of those purposes the real estate is taxable; and all the real estate belonging to any church or hospital or lodge in excess of one acre if situate within an incorporated town, or in excess of five acres if it is outside of such town, is taxable, whether or not it is exclusively so used. Their endowments, if they consist of money or are invested in notes, if used exclusively for some one of those purposes, and their furniture, are not taxable. No other property is exempt from taxation. For the payment of private debts, the homestead and certain private property of the homesteader cannot be sold; but the homestead is taxable just the same as other property.

But no property is free from paying its share of benefit assessments. For the construction of sidewalks, and paving streets, and the building of district sewers, churches and private school lots and private cemeteries and private hospitals must pay their just proportion of the cost, just as lots occupied by stores and banks.

355. Uniformity of the Tax Rate.—The amount of direct taxes each person must pay, in every case, except poll-taxes, depends on the amount of property the person owns. All the property any person owns is required to be assessed or valued, and then the law fixes a uniform rate of taxes against property according to its value. That rate is a certain per cent of the assessed value of the property taxed. For school purposes it is the same against all property in the school district, for city purposes it is the same against all property in the city, for county purposes it is the same against

all property in the county, for state purposes it is the same against all property in the State. City taxes, of course, may be higher in one city than in another, and county taxes may be higher in one county than in another, and school taxes may be higher in one school district than in another; but all the inhabitants in the city, or the county, or the school district, must pay the same number of cents for each hundred dollars' worth of assessed property they possess, and the only way they can escape taxation is to escape assessment, and the only way they can escape assessment is to either dodge the assessor and conceal their property or to falsify to him the amount of property they own; and for an attempt to escape taxation in any of these ways the law affixes penalties, which are set forth in section 275.

356. Separate Taxes for Separate Purposes.—There is a tax for school purposes, and another tax for city purposes, and another for county purposes, and another for state purposes, and each property-owner must pay taxes for these various purposes. The inhabitants of no city, for instance, can escape taxes for state or county or school purposes simply because they pay taxes for the support of the government of the city in which they live. The city, the county, the school district are all separate subdivisions of the government, and for the support of government in each separate taxes are levied, and when collected can be used only for that purpose. There are other duties of government which cannot be performed by any county, or city or school district, but only by the State as a whole, and hence taxes must also be collected to support the State government.

357. Place of Taxation.—Real estate (and that means lands or lots, and the houses and buildings thereon) is taxed in the county, or city or school district in which it is situated. But personal property (and that means almost all other property, such as cattle, notes, money, wagons, etc.,) is taxed in the county, city or school district in which the owner resides.

The law phrase is that "personalty follows the person." That means that the resident in the country may have a great deal of personal property, such as moneys or notes, etc., in a city, but it is not taxable in that city for city or school purposes, but is taxable for school purposes in the country district in which he resides, and not for city purposes at all.

358. Time of Assessment.—The owner of property may be at one place on the first day of June and at another place on the day he is actually assessed. In order that he may not be taxed twice the law does not seek to know the amount of personal property he owns on the day he is actually assessed, but the amount he owned on some recent day in the past. That day is by law the first day of June. He may between the first of June and the day he is actually assessed move to another place, but he is assessable at the place at which he resides on the first day of June, and all the personal property he owned on that date, wherever situated, is taxable at that place. He is also taxable on all the real estate which he owned on the first day of June, but that is taxable where it is.

359. Rate for State Purposes.—The annual rate of taxation for state purposes was by the present Constitution to be fixed at twenty cents on the hundred dollars valuation until all the property in the State should reach a valuation of nine hundred million dollars, after which it was not to exceed fifteen cents on the hundred dollars. The assessed value of all property in Missouri has for more than twenty years been more than nine hundred million dollars, in fact is now close to twice that sum, and, therefore, the tax rate for ordinary state purposes cannot exceed fifteen cents on each hundred dollars of valuation. Hence one whose property is assessed at \$1,000 will pay \$1.50 for ordinary state purposes, and one-third of that amount will go to support the public schools, and the balance will be used by the State in paying its current expenses—in paying its officers and the cost of

prosecuting criminals, in supporting the State University and the six Normals, in maintaining the hospitals for the insane, the feeble minded and consumptives, the State Fair and the penitentiary, and in meeting its many other obligations.

360. Rates to Pay State Debt.—The Constitution also provided that, in addition to the tax to pay the State's ordinary current expenses, there should be levied each year a tax sufficient to pay the interest and a part of the principal of the state debt, which at the time of its adoption amounted to nearly twenty-five million dollars. All the state debt except that due the Seminary Fund and the Public School Fund had been paid by 1903, and in 1902 the Constitution was so amended as to provide that only so much tax to pay the state debt should thereafter be levied as is necessary to pay the interest due those funds. The tax necessary to pay the interest each year does not exceed two cents on the hundred dollars' valuation, and all moneys arising from it can be used for no other purpose. When added to the fifteen cents that may be levied for ordinary state purposes, the entire rate of direct taxes for state purposes does not exceed seventeen cents on the hundred dollars of valuation.

361. Licenses and Fees.—But the taxes spoken of in section 359 do not constitute all the state revenues; in fact, scarcely one-half of them. Nearly half of those revenues, in some years more than half, are raised by license fees collected from saloons, inspection fees collected for the inspection of beer, license and other fees collected from insurance companies, commission fees collected from notaries public and other officers commissioned by the Governor, incorporation fees collected from corporations permitted to do business in this State, and other fees collected from other things.

362. Rate for County, City and School Purposes.—The rate of direct taxes for county purposes has been discussed in the chapter on Counties, and that for city purposes

in the chapter on Cities, Towns and Villages, and that for school purposes in the chapter on Public Schools.

363. License Taxes.—The State, the county and the city have other ways of raising revenue besides a direct *ad valorem* tax levied against property. They do so by means of some kind of license or inspection tax. The State imposes registration or license fees against automobiles and corporations, an inspection fee against beer, and many other license or inspection fees. The county may impose a license tax on saloons, and on shows and circuses, on peddlers and auctioneers, on private bankers and brokers, and some other things. The city may impose a license tax on saloons, on dray wagons, merchants, breweries, shooting galleries and on hundreds of other things. In this way the revenues of the State, and of the county and of the city may be increased. A school district can levy no license tax of any kind.

364. Occupation Taxes.—Every city is given power to levy a tax on merchants, peddlers, shows, shooting galleries, vehicles and dray wagons, for the privilege of doing business in the city. Such a tax is called an occupation tax. Such taxes are usually small, and ought always to be commensurate with the advantages which such persons have over other persons. Thus, a dray wagon will use the streets more than an ordinary buggy or wagon; the policeman will spend more time in preserving order about a store than about a private residence; in a certain district a fire would cause far more damage than in other parts of the city, and hence more caution will be taken to prevent fire there. It is nothing but right, therefore, that the owner of the dray wagon, the merchant or the factory owner, should pay some additional tax for the special privileges or protection he enjoys, and that is the reason for levying occupation taxes. They are taxes which persons wishing to carry on a certain kind of business must pay for that privilege. An auctioneer's license is such a tax. So is a license to a circus and many other things. Every

city is given the right to levy an occupation tax on many kinds of pursuits, and the larger the city (that is, the higher is its class) the more of such things it may tax. But no city can impose such a tax on anything unless the Legislature has in so many words given it power to do so. All license taxes of every kind, whether levied for state, or county or city purposes, are in a sense occupation taxes. They are all charges for the privilege of doing an unusual kind of business. They cannot be levied in any case except where the Legislature by a general law authorizes them to be levied.

365. Saloon Licenses.—A majority of the qualified voters of each city having twenty-five hundred inhabitants or more, at an election held for that purpose, can altogether prohibit the sale of intoxicating liquors within the city; and a majority of the qualified voters in the county residing outside of any such city can in the same way prohibit the sale of intoxicating liquors in the rest of the county. This may be done under what is known as the Local Option Law, which has been a law of this State since 1887. It gives the people of each community the right to decide whether or not they will permit saloons to exist in their midst. If the law has once been adopted it remains in force until the question is again submitted to the voters, but when it has once been legally submitted, whether adopted or not, it cannot again be submitted for four years.

But if the people do not adopt the Local Option Law, the county court may grant to the owner of a saloon a license to keep a dramshop by charging him a county license tax of not less than \$250 nor more than \$400 for each period of six months, and in addition a state license tax of \$200 for the same period. Of course, the Legislature can at any time increase or decrease either the county or state tax, or both, and fix either at an invariable sum.

In addition to the state and county tax, the mayor and council of each city can also fix a city license saloon tax at

whatever sum they may wish. They can make it as high as they wish, or as little as they please, and if they prefer they can refuse to assess any license tax whatever against saloons. But as a matter of fact, in the largest cities the license tax is usually \$500 for each period of six months, and in the few cities of the third and fourth class that now have saloons the license tax varies from \$1,000 to \$4,000 a year. But the city can license no one to keep a dramshop until he has first obtained a license from the county court, and the court can grant no license unless the applicant pays the state and county license.

366. License, How Obtained.—The county court can not grant a saloon license in a town having two thousand inhabitants or more until the license is petitioned for by a majority of the tax-paying citizens of the block in which the dramshop is to be kept; and a license to keep a dramshop in a town having less than two thousand inhabitants cannot be granted until a majority of the tax-paying citizens of the block in which the saloon is to be kept, and also a majority of those of the town, sign a petition asking that such license be granted. And the words "tax-paying citizen" do not mean voters, but mean all adult persons owning property assessed for purposes of taxation, whether they be men or women. The petition must be renewed each year. Nor is the court even then compelled to grant the license. It is not compelled to do so until two-thirds of the tax-paying citizens in the block, or in the block and town, as the case may be, sign the petition, and even then the court must refuse the license if the applicant is not a law-abiding citizen. The license cannot be issued in any case unless at least a majority of the tax-paying citizens sign the petition, and the applicant is shown to be a law-abiding citizen, and even then the court may withhold the license unless the petition is signed by at least two-thirds of the tax-paying citizens.

367. Saloon Tax, How Used.—Two-thirds of the money derived from county saloon license taxes must be used in improving the public roads and bridges of the county, and the other third goes into the general revenue fund of the county, and may be used as other general revenue. The saloon license tax collected by the city may be used in paying any current expenses of the city, unless the city and the surrounding country not exceeding eight miles square have been organized into a special road district. In that case, one-fourth of the dramshop-license tax collected by the city is used in improving the public roads lying outside the city limits, and is turned over to the road commissioners to be used in that way.

368. Revoking License.—The license though once granted may be revoked for selling or giving away intoxicating liquors to an habitual drunkard, or for selling or giving them away on Sunday or on a general election day, or for keeping a disorderly house. And for selling or giving such liquors to minors without a written permission of the parent, the parent may recover \$50 from the saloonkeeper or his bondsmen by suit, and in addition he may be fined as much as \$200; and for selling or giving away on Sunday or a general election day he may be fined a like sum; and if he sells or gives intoxicating liquors to an habitual drunkard after having been notified in writing by the wife, mother, sister, brother or child not to do so, such wife or mother may recover not less than fifty nor more than five hundred dollars in a civil suit. And every county court is forbidden to issue a license to a saloon-keeper whose license has once been revoked or who has been convicted of a crime.

369. Excise Commissioner.—In the city of St. Louis there is an officer appointed by the Governor who is empowered to grant saloon licenses, just as county courts are in other counties, and for a license there a dramshop-keeper must pay both a city, county and state license tax just as

dramshop-keepers in other counties and cities do. Such an officer is necessary there because there is no county court in St. Louis, and the law provides that he shall be appointed by the Governor, rather than elected by the people, in order, as far as possible, to relieve him from the political influence of the saloons.

370. Poll Taxes.—A poll tax is a very old form of taxation, and one that all governments resort to at times in order to create or replenish a much-needed fund. It is a *per capita* tax; that is, a tax levied on each person on the poll or list of persons of a certain age.

In this State a poll tax is a tax of from one to six dollars that may be levied on every able-bodied male citizen in the State between certain ages, usually between twenty-one and fifty years. In cities it goes into the city treasury, and is used in keeping the streets in repair. If the citizen does not live in a city, he is permitted to pay the tax either in money or by working on the roads. It cannot be collected for both county and city purposes; if the city is authorized to levy it, the county is not. The county court is required to levy it on all able-bodied male citizens of a specified age who reside outside certain cities, but on no other persons; and inside those cities the mayor and council may levy it, and in some cities, especially in those organized as special road districts, are required to levy it.

370a. Inheritance Taxes.—One's ownership of property ceases with his death. He has only such right to say to whom it shall go after his death as the law confers upon him. The right to inherit property from a parent or other kinsman is not a natural right; it exists because the law creates it. Upon the death of the owner the State has the right to step in and say to whom his property shall go. It can take a part of it itself, and say to whom the balance shall go. The part it takes is usually denominated an inheritance tax; if it takes only a part of the portion that would otherwise go to distant or

collateral kindred, such as cousins, it is called a collateral inheritance tax. But in reality it is not a tax at all. If it were a tax it would be invalid, because not the same or uniform against all persons. It is usually defined as a charge upon the privilege of inheriting property from an ancestor or kinsman who has died. It is in reality the part of the property of one who has died which the government appropriates to itself upon his death. The government takes a certain per cent of what he left, and says by its laws to whom the rest shall go. But by what is left is meant what remains after the debts are paid, and the statutory allowances to the widow for the support of her family are taken out, such as provisions for one year, household furniture, and about four hundred dollars' worth of other things. The debts and these allowances being deducted, the widow or husband and each child of the deceased owner is permitted to take a certain other portion of the estate free from the tax, usually ten thousand dollars for the widow or husband, and two thousand for each child; then the balance up to a certain sum, usually twenty-thousand dollars, is taxed one-half of one per cent. The tax on the next thirty thousand is two per cent, and on the fair market value between fifty and one hundred thousand dollars is three per cent, and increases, by graduated percentages, as the value of the estate increases above that sum. If the deceased owner left no widow, husband or descendant, but the estate goes to collateral kindred, the tax is much larger, and increases the farther removed in kinship the heirs are. The owner cannot defeat the tax by attempting to give it away prior to his death, for it is levied on all lands conveyed or property transferred by him without a fair consideration at any time within six years before his death. Nor can he defeat the tax by his will, except that any money or property given by him to a college or church or lodge or hospital, or other charitable or educational or religious use, is not subject to the tax. The money derived from the tax is paid into the State Treasury, and heretofore much of it has been

used to support the State University and the School of Mines and Metallurgy.

Questions on Chapter X.

1. What is said of the subject of taxation? (351)
2. What are taxes? (352)
3. What are the people entitled to in return for taxes? (352)
4. Read the whole of section 352.
5. Does the government have any way to make money? (353)
6. What property is exempt from direct taxes? (354)
7. Does this exemption apply to benefit assessments? (354)
8. Upon what does amount of taxes one must pay depend? (355)
9. What further is said about uniformity of taxation? (355)
10. Must separate taxes be levied for separate subdivisions of government? (356)
11. Where is real estate taxable? (357)
12. Where is personal property taxable? (357)
13. As of what date are taxes assessable? (358)
14. What is the rate now for state purposes? (359)
15. What is the present state debt rate? (360)
16. How else are the State's revenues increased? (361)
17. How else may the county increase its revenues? (363)
18. How else may the city increase its revenues? (363)
19. Can a school district levy a license tax? (363)
20. What is said of occupation taxes? (364)
21. Give some examples of an occupation tax. (364)
22. When may such taxes be levied? (364)
23. Can the people of a locality prohibit altogether the sale of intoxicating liquors? How? (365)
24. Read the balance of section 365, and all of sections 366 to 369.
25. What are poll taxes? For what are they used? (370)
26. Discuss inheritance taxes. (370a)

CHAPTER XI.

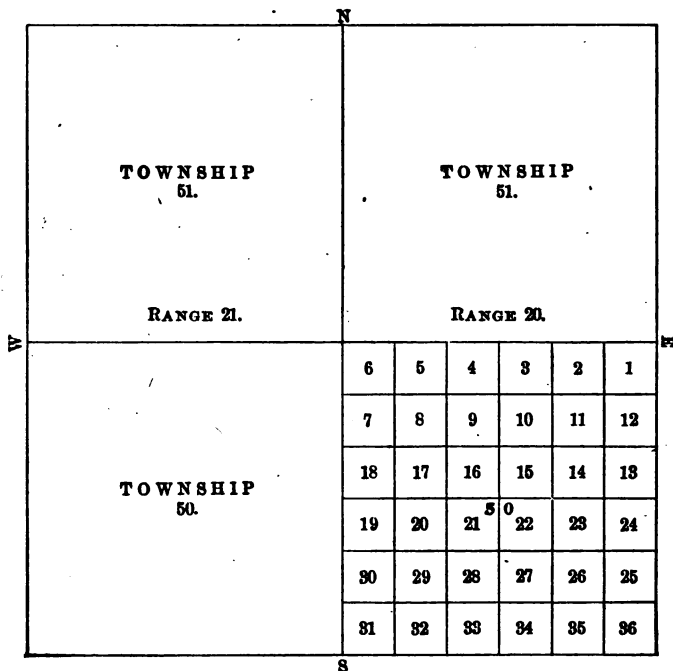
LANDS AND MISCELLANEOUS MATTERS.

371. Congressional Townships.—Congressional townships are to be distinguished from municipal townships. The municipal township is an irregular subdivision of a county made by the county court. A Congressional township is a square body of land bounded by lines running east and west which are crossed by other lines running north and south in such manner that each side of the square is six miles long. It is a regular subdivision of nearly all of the lands of the country west of the Mississippi River, and in other parts of the United States, made by Government surveyors, for the ready conveyance of land to purchasers. Here these subdivisions were made about the time Missouri became a State, in accordance with an act of Congress, and hence their names.

372. Necessity of Understanding Them.—We have all heard of sections, townships and ranges in describing land transfers. These terms are used in finding or "locating" every farm in almost every county, and in laying out every town and city in the State, and in levying taxes.

373. How Made.—The Government surveyors first agreed upon "base lines" and "principal meridians." There are many of these in the United States, but the base line from which Missouri lands were surveyed runs east and west through Arkansas, near the center of that State, and within a few miles of Little Rock; and the principal meridian from which these surveys were made is the Fifth Principal Meridian, which runs north and south through the eastern part of the State, about thirty-six miles west of St. Louis. It is fourteen degrees of longitude west from Washington.

For a better understanding of ranges, townships and sections this diagram is subjoined, showing certain lands in Saline County:



374. Ranges.—Other lines parallel with the Fifth Principal Meridian, and just six miles apart, were run by the surveyors, and all the territory between any two of these lines is called a range. All the land within six miles of the Fifth Principal Meridian is in Range 1, and that between the next two range lines is in Range 2, and so on westward to the western border of the State, and eastward to the Mississippi river. A range then is six miles wide. If your range is 21 west, that indicates that there are twenty ranges between

yours and the Fifth Principal Meridian, and that you live west of that meridian.

375. Townships.—Other lines, six miles apart and parallel with the base line, are run east and west through the State, so that the whole State is divided into a kind of checker board, or squares of six miles. Each of these squares is a Congressional township. These townships are numbered consecutively north from the base line. If you live in township 49, that indicates that there are forty-eight townships south of yours between you and the base line, and it also indicates that every township due west or due east of yours, entirely through the State, is also numbered 49.

376. Sections.—Each Congressional township is divided into sections. A section is a piece of land one mile square. So each township contains thirty-six sections. These are also numbered. The first section in the northeast corner of the township is section 1. The one just west of it is section 2, and so on to the last section in the northwest corner of the township, which is section 6. The one just south of section 6 is section 7, and the one just east of that is section 8, and so on to the last section at the east side of the township, which is section 12. Right south of section 12 is section 13, and then the count is back to the west again, and then back to the east, and so on in this looping order until section 36 is found in the southeast corner of the township. The corner of each section was originally marked by a long stone set into the ground, and township corners by yet larger stones.

377. Subdivisions of Sections.—Each section is divided into four parts, called "quarter sections." They are the northeast quarter, the northwest quarter, the southeast quarter and the southwest quarter. Each contains one hundred and sixty acres. And each quarter section is again divided into four equal squares, so that forty acres in the

southeast corner of the section is described as the southeast quarter of the southeast quarter.

378. How Used.—This system of describing land is used in conveyancing, or in making deeds, and in levying taxes. In a deed to a farm the land is rarely described in any other way, but the building or lot in a town or city is described in deeds by the number of the lot, the number of the block, and the name of the addition wherein it is located. But these numbers have been made to conform to a plat of the town or city, recorded with the recorder of deeds, which plat was arranged from the numbers of the section, township and range. So that this United States Surveyor's system is the basis for describing real estate in most deeds and in levying taxes.

379. Deeds.—A deed is a written contract by which land is conveyed from one person to another within the life-time of both. The person who makes the deed is called the grantor, and the person to whom the land is conveyed, the grantee. If the grantor covenants that the grantee is to have an indisputable title, the deed is a warranty deed; if he simply conveys all the title he owns it is a quit-claim. Deeds are the instruments by which people convey land while they are living. But in order to convey the land the deed must be delivered, but when signed and delivered it conveys at once the title it purports to convey.

380. Acknowledgment and Record.—A deed signed by the owner of land and delivered conveys to the grantee all his interest in the land; but in order to be recorded it must be acknowledged. That means that the grantor goes before a notary public or a justice of the peace or some other public officer and acknowledges that his signature to the deed was his "free act and deed," and then that officer attaches his certificate to the deed, showing that it has been so acknowledged. Then the deed can be recorded by the county recorder, and

from that time on the record is notice to all the world that the land has been conveyed to the person named as grantee.

But suppose the grantee does not have his deed recorded, and the grantor after he has made him a deed makes one to another person and that person without any knowledge of the prior deed puts his deed of record, that other person then has a prior right to the land. So, the necessity of recording a deed as soon as it is made. The purpose of recording a deed naming you as grantee is to give other persons notice that you are the owner. After the deed is recorded, if any person buys the land from the same grantor he is chargeable with notice that it had been previously conveyed to you.

But a deed cannot be recorded unless it is first acknowledged; so, the necessity of a good acknowledgment.

381. Transfer by Will.—Lands can also be devised by wills. The owner may make a will, and retain the land during his life, and after his death his will goes into effect, and the person to whom he has given the land becomes the owner. This is a marked distinction between deeds and wills; a deed must take effect within the lifetime of the grantor, if at all, and can take effect only on delivery to the grantee or to some person for him, but when delivered it becomes a complete contract, and cannot be revoked by the maker; a will never takes effect until the death of the maker, and does not have to be delivered to the devisee during the life of the maker and can be revoked by him at any time during his life.

382. Partition of Lands.—If the owner of land dies without a will, the land (if he has no debts) goes to his heirs, and the law declares who are the heirs and just what portion each is to have. They can agree upon a division among themselves, and make deeds to each other. But if they cannot agree, any heir can go into court, and ask the court to make the division for them. The court will appoint commissioners to divide or partition the land among them, ac-

cording to their legal rights, if that can be done, but if that cannot be done, the court will order the land to be sold, and then will divide the money among the heirs. That is called a partition suit or a proceeding in partition.

Usually the maker of a will divides up his land among his devisees by the will itself by giving to each a certain tract or a certain lot. But if he does not do that, but gives his lands to two or more devisees, without mentioning which portion each is to take, they can divide them among themselves, or resort to a partition suit for the purpose.

383. Title.—Title is the foundation of one's ownership of real estate; it is the written instruments whereby his right to the land is established. It consists of a patent from the United States, and all deeds and wills concerning the land from the date the patent was issued up to the present time. To be a perfect title each deed in the series must be a perfect instrument and the maker thereof must have been the actual owner. Such a chain of title of perfect deeds is rare. But the Legislature has provided against any injury that might result to the actual owner because of these imperfections, in the **Statute of Limitations**. By that statute any person who has been in actual, adverse and exclusive possession of property for ten years claiming to be the owner, is the owner, and cannot be dispossessed unless the person out of possession and claiming to be the owner and to have a title is a minor or a married woman or a remainderman, in which case the possession of the actual occupant must be for a longer term of years. This is one of the most beneficent statutes ever written. If it were repealed the greatest confusion would result, and no householder would be secure in his home.

384. Remainders.—Both by deed and by will all the owner's right and title to land may be conveyed to one person, or it may be conveyed to one for life and to another thereafter. The person who takes the estate for his life is

called the life tenant, and the person who next takes is called the remainderman and the estate he takes is called the remainder. The life tenant does not take the title; he only takes a lifetime use. The remainderman takes the title, but his right to the use and possession is postponed until the death of the life tenant. In this way the owner of land may keep it in his family for many years after his death. Thus, if he gave to his daughter a certain house and lot to be held and enjoyed by her during her natural life and after her death by the heirs of her body then living, she could hold and use it so long as she lived, or she could sell her right to its use during her life, but she could sell no more, and at her death her descendants then living would at once become the owners and entitled to the possession, but they would at no time while she lived be entitled to the possession, nor would they be barred from asserting their right to possession on her death by the statute of limitations, although she may have been in possession for thirty or forty years, for until her death the possession of no one can be adverse to them. In this way the owner of land may keep it in his family at least during the life of his own children.

385. Homestead.—The law believes society is stronger if every family has a home. In this State the dwelling house of the head of a family cannot be taken for his debts, and his widow and minor children are entitled to live in the residence owned by him at his death—the widow during her life or widowhood, and the children while they are minors. But there can be no homestead as against the debts made prior to the time the husband acquired and occupied his residence, nor can the homestead in the country exceed one hundred and sixty acres of land nor \$1,500 in value, but so much of the one hundred and sixty acres can be retained by the husband during his life, and by the widow and children after his death, as is worth no more than \$1,500. In cities and towns the maximum value and size of the homestead depend on

their population. In towns having less than 10,000 inhabitants the maximum value is \$1,500, and the maximum size not more than five acres. In larger cities this value is larger and the amount of ground less.

385a. Exemptions relate to personal property, as homesteads relate to lands. A certain amount of personal property cannot be sold for ordinary debts, and that property is usually designated as exemptions. Two work animals, ten hogs, ten sheep, two cows and calves, twenty-five dollars' worth of stock feed, and the necessary farming implements, or in lieu of those things three hundred dollars' worth of any other property, except ten per cent thereof, and four beds with usual bedding, all wearing apparel of the family, and any other family furniture not exceeding one hundred dollars in value, and one hundred dollars' worth of provisions on hand, cannot be sold for the debts of the head of a family; and by head of a family is meant any person charged with the support of a family, whether man or woman. A widow having minor children or aged parents to support is the head of a family, if she controls and keeps a house in which she and they reside. So would be an unmarried man who supports and keeps with himself in a house his mother and sisters, and a married man with a wife alone may be the head of a family. But no property is exempt from sale to pay taxes, nor to pay for the services of a house servant or common laborer, to the amount of ninety dollars, nor is any personal property in the hands of the purchaser exempt from seizure for the purchase price thereof. All the property of one not the head of a family, except his wearing apparel and the necessary tools and implements of trade of any mechanic, may be sold to pay his debts.

386. Dower.—In addition to her homestead in her husband's residence, the widow is entitled to a dower of one-third of all the other land he owned at any time during their marriage, not by her deeded away while he lived, and she is

entitled to a child's share in his personal estate. If he made a deed to a piece of property in which she did not join, her dower remains and may be recovered by her after his death. But a dower only lasts for life. It is extinguished by her death. But instead of this lifetime interest of one-third of her husband's real estate the widow may take, if she desires, a child's share. If there is only one child, her share then will be one-half of the husband's real estate after his debts are paid. If he dies without children or other descendants, her dower is one-half of all the property he owned after the debts are paid, not for life only, but absolutely.

387. Curtesy.—The husband's curtesy is something like the widow's dower. It is a lifetime use of the lands owned by the wife at her death. But in order that he may have this interest he must have had the possession and use of the property during the marriage, and a child must have been born alive of the marriage. If the child survives her he has only a lifetime use of the wife's lands. But if she die leaving no children or other descendants, he is entitled to one-half of all her property absolutely, and, if a child was born of the marriage and has died, to the use of the remaining half of her real estate of which he had the possession during the marriage.

388. Wills and Heirs.—Every person may make a will for the disposal of his property after his death, and he may give his property to whom he pleases, except that the husband cannot deprive the wife of her dower or homestead interest, nor can the wife deprive her husband of his curtesy. But a father by will may disinherit one or all of his children, and so may the mother.

But if the father die leaving no will his property goes as the law directs; that is, after the payment of his debts, his wife gets her share (dower and homestead and one year's provisions for the support of the family, the family furniture and about \$400 worth of other things and a child's share in

the rest of the personalty), and the balance goes to his children in equal shares, and if a child has died leaving children they get a child's share.

If a husband die leaving no will, and no children or other descendants surviving him, his wife gets one-half his property, and the balance goes to his next of kin, that is, to his father and mother, brothers and sisters, or their descendants, in equal proportions; but if he have no such kindred, then all his property goes to his wife.

If the wife die leaving no will her property goes to her husband and children or other near relatives in almost the same way as does the husband's property in case of his death; that is, after the payment of her debts, the husband gets his curtesy, and the balance goes to her children in equal proportions. If she leaves no children or other descendants, her surviving husband gets one-half of all her property absolutely, and if a child has been born of the marriage and died, a lifetime use of the other half of her real estate, but the other half of her personal property and the title to the other half of the real estate and its use after his death, go in equal proportions to her father, mother, brothers and sisters, or their descendants, if any there be, but if there are none, then all her property goes to her surviving husband.

If the nearest relative the husband has is a first cousin, and he leaves no will, the wife gets all his property. Likewise, if the nearest relative surviving the wife is a first cousin, and she leaves no will, the husband takes her entire estate.

388a. Married Women.—A married woman has the same right to contract as does her husband. She can sue and be sued. She can own and sell property, and dispose of it without her husband's consent. He cannot appropriate her money or the rents from her real estate or her other personal property without her written consent. The law puts upon him the obligation to support her and his minor children, and for deserting her or his children under fifteen years of age

and failing to provide for them without good cause he may be punished. Whether he deserts her or not, if he fails to provide for her support she may buy, on his account and without his consent, at stores and elsewhere, things necessary to live upon, and he may be made to pay for them if he has sufficient property or income. But the wife is under no obligation to support the husband, and cannot be punished for deserting him. But she is required to follow his fortunes, make her home where he does his, and if she deserts him he is under no further obligation to support her and cannot be punished for failing to do so while she remains away.

388b. Marriage.—Previous to a marriage in this State a license authorizing a minister or civil officer to solemnize the ceremony must be obtained from the county recorder, and he cannot issue a license until he is satisfied that the man is twenty-one and the woman eighteen years of age, or if either is not of that age until he has the consent of his or her father, or of the mother or guardian if the father is dead or does not reside with his family; and even after the license is issued, there can be no legal marriage without the consent of both the man and woman. There can be no legal marriage between first cousins or persons more closely related, or between white persons and negroes, or between white persons and Mongolians (such as Chinese and Japanese). But in some states marriages between first cousins is legal, and when such persons have married in one of those states and later taken up their residence in this State their marriage is legal here. If a marriage is legal in the state or nation where performed it is legal in this State. But it is usually not legal in any other state if not legal here when performed here.

Questions on Chapter XI.

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CHAPTER XII.

CORPORATIONS.

389. Formation and Explanations.—Any man or woman over twenty-one years of age, whether married or unmarried, can make contracts, own property and engage in any kind of lawful business. That is business by a natural person.

Two or more of such persons may associate themselves into a partnership, and in the name of that partnership transact a certain kind of business or many kinds. Each of the partners puts in a certain amount of the capital which is used for the partnership business, and each is entitled to his proportionate share of the profits, but each is responsible for all its debts, whether they were made by him or by some other partner who had authority to make them, but before he can be held individually responsible all the partnership funds must be exhausted to pay the partnership debts.

In order to lessen their individual liability men often form a corporation, the members of which are never liable for anything more than the face value of their stock, except in cases of national banks, the stockholders of which are liable for twice the face value of their stock. Besides, there are some businesses too large and extensive to be carried on successfully by individuals or partnerships. To transact the larger kinds or an unusual kind of business the law permits corporations to be formed.

A corporation is always a company. But corporations are not the only kind of companies. A partnership sometimes takes the name of a company, although it is usually

properly spoken of as a firm; and an individual can do business in any name he may choose to adopt. Thus, the New York Clothing Company may be owned by one man, named, for instance, John Smith. But that is not a company at all, but simply a name in which John Smith wishes to do business as a clothing merchant. He cannot lessen his liabilities by doing business in that name, for he is liable for all the debts that the New York Clothing Company may make. He may wish to keep his clothing business separate from some other business he wishes to carry on, and may think he can do a better clothing business by assuming that high-sounding name, and the law permits him to do that. So also may the New York Clothing Company be owned by a partnership composed of Smith, Jones and Brown, with a capital stock of \$100,000 or any other sum. In that case each of those three would have an interest in the concern, and each would be responsible for all its debts. And the partnership could engage not only in the clothing business, but in almost every other kind of business the partners might wish to undertake in its name. It could own lands, deal in cement or railroad ties, or engage in manufacturing.

Now, if those three men wanted to incorporate the New York Clothing Company, either by themselves or together with any number of other persons, they would apply to the Secretary of State for a charter, stating the kind of business they wished to engage in, and the amount of capital the company had and how much of it was paid up, and how much was paid by each one of them. If there was no other company already incorporated by that name, the Secretary of State would issue a charter defining the kind of business it could engage in, and thereafter it could engage in that business, but it could engage in no other, nor could it do business in any other name. The company would then issue certificates of stock to each person named in the charter for the amount of capital he had paid in, and the holders of that

stock would be the stockholders of the company. The stockholders would elect certain of their number to be directors, who are charged with the management of the company's business. The directors would elect one of their number president, another secretary, and another treasurer, and they would fix the salaries of those officers, and at the end of each year or oftener they would determine what rate of dividend should be paid to the stockholders.

390. Stockholders and Directors.—Every corporation must have at least three directors, and may have as many stockholders as there are shares of stock. The interest of each stockholder depends on the number of shares of stock he owns, and when directors are elected he has as many votes as he has shares multiplied by the number of directors to be elected, and he can cast all his votes for one man or scatter them. Thus, suppose he has five shares of stock and there are five directors to be elected; he can cast five votes for each of five stockholders he wishes to have elected directors, or he can cast twenty-five votes for one and none for the others. A stockholder can draw nothing out of the company's treasury except dividends, which means the net earnings of the business. He is not liable for the company's debts, and if it fails he will lose only what he paid for his stock, unless the charter falsely stated at the time the company was incorporated that a greater per cent of the stock has been paid up than was actually paid up, in which case the stockholders would be liable to the creditors of the company for what the charter stated had been paid up when the company was incorporated, less the amount actually paid. He can sell his stock, and the purchaser will have the same rights as a stockholder that he had. He may die, but the company would go on. His stock might be sold for his debts, and that being simply a piece of paper (or certificate reciting the number of shares he owns) is easily transferred, and hence the company's existence would not be affected by his death,

whereas if it was a partnership its affairs would have to be wound up, its debts paid, and his share in what was left turned over to his administrators.

391. Definition and Powers.—A corporation, then, is defined as an artificial person. It is a company which the law permits to be created for the transaction of a certain kind of business. It derives all its powers from the State, and can engage in no business except that mentioned in its charter or the laws, and its name must indicate the kind of business it wishes to carry on. It must have at least three directors and may have thirteen, and three of them must be residents of this State.

392. Duration.—If the corporation is a railroad company it may exist until its stockholders wish to surrender their charter, but nearly all other business corporations are given the right to exist for twenty or fifty years, but at the end of that time their charters may be renewed for another like period, and so on indefinitely, unless the law has in the meantime been changed.

393. Ownership of Real Estate.—A corporation can own such real estate as is necessary for the carrying on of the particular business in which it is engaged, such as its store or banking house, but it can own no other real estate except such as it takes in payment of debts due it, and even that it can not retain longer than six years.

These are the general rules governing business corporations.

394. Foreign Corporations.—Nearly every corporation is organized under the laws of some state, and those chartered by some other state or by some foreign country are called foreign corporations. They have no right to do business within this State except upon such terms as the State may prescribe. Those terms are usually the same as those prescribed for home corporations. If they wish to come

to this State to do extensive business they must secure a license from this State, and have an office or place of business here, and pay the same fees for that license as a home company with a like capital. If they simply buy or sell goods or other commodities in their own state from or to citizens of this State, they are not required to have a license from this State, but under what is called "comity between states" are protected in the legal transaction of their business.

395. Educational and Religious Corporations.—

But there are other corporations, such as colleges or universities, which have charters just as do business corporations, and their affairs are managed by a board of directors, called curators or trustees. They have no capital stock, and consequently no stockholders, but their directors are elected by a synod or conference or an association, or by the remaining trustees when a vacancy occurs. They are perpetual corporations, and often own considerable property, which has been given them, and which can be used in any way mentioned in their charter that will promote the best interests of the institution.

396. Public Service Corporations.—Railroads and street railways are public service corporations. They have been organized for the accommodation of the general public—for transporting freight from one place to another and carrying persons from place to place. They are called common carriers, and for the service they render they are permitted to charge reasonable fares, but they have no authority which they are not specifically given by law, and being created for the public good the State has the right to regulate their freight and passenger rates and to fix them within reasonable bounds. It also has the power to require them to exercise the strictest care and diligence to prevent accidents to passengers and loss of freight, and to avoid injury to persons on the track.

There are other public service corporations, such as telegraph and telephone companies, electric light and gas light companies and water companies. All of these companies can exercise no power except such as is given them by law, and the State or the city may prescribe rules by which they may do business, and they are not permitted to fix the charges for the services rendered according to their own will.

But it is difficult for the public or for the city council or legislators to know what is a just charge. Just rates depend upon the cost of the company's plant, the amount of money it must pay for labor and fuel and materials and equipment, and the cost of these things can be known only by an examination of its books. City councils and legislators are rarely in a position to make such examination. The State has therefore created a Public Service Commission, composed of men who give their entire time to such matters. They are aided by numerous expert accountants, engineers, electricians and materialmen, who can by close examination furnish the necessary information, and then the Commission fixes the rates that the company may charge, and also requires it to make any needed improvements.

397. Municipal Corporations are cities, towns, school districts, drainage districts, public road districts, or other like subdivisions of the government. They have officers, who act for them just as do those of private corporations. To illustrate, a city instead of a president will have a mayor, instead of a board of directors it will have a board of aldermen or a city council, instead of stockholders it will have voters and taxpayers, and it will have such other officers as may be necessary for the transaction of its business, and like other corporations it can exercise no authority except such as is given it by the General Assembly.

398. Condemnation and Eminent Domain.—Railroads and all municipal corporations are given power to take land for their own use. A railroad may take a private house

in town or part of a farm for its tracks, a city can take private property for a street or a hospital or a city hall, a school district can take a lot for a school house site, and a drainage district can take land for a necessary ditch. But none of them can take any land except for a public use, and they are not permitted to say what is a public use, nor is the Legislature, but whether or not the purpose for which it is proposed to take the land is a public use is to be determined by the circuit court or some higher court. Nor can any of them take any land for a use admitted to be public without first paying its just value. They cannot take it with a promise to pay for it afterwards, but before they can touch it or in anywise disturb the owner in the peaceable enjoyment of it, they must pay for it. Nor are they permitted to decide what is its just value, but a set of disinterested commissioners first fix its value, and then if either side is dissatisfied with their award he can have a jury in the circuit court to determine its value. But if the court decides that the use to which the property is to be put is a public use, and the corporation pays to the owner or into court for him its value as fixed by the jury, he must surrender it, although it be his cherished home.

This is called the law of eminent domain, and the suit by which the owner's land is taken from him is called a condemnation proceeding. The law of eminent domain is a part of the law of the land; it means that the owner of real estate owns it subject to the right of the public to take it for a public use by paying for it its just value.

No property can be taken for a private use with or without just compensation except with the owner's consent, except for a necessary private way to a house or farm, or a necessary drain for sanitary purposes; but for a public use it can be taken without his consent upon the payment of a just compensation.

Other public service corporations, such as water and light companies, have been given power to take land for a

public use in a limited way, but no city or railroad or school district or other public service corporation can take any property for any use unless the General Assembly gives it that power, and even after that power has been given the courts will, in every case in which their aid is asked, determine whether the particular use to which the corporation proposes to put the property is a public use.

The law of eminent domain rarely works a hardship on the owner of land. The public corporation has the right to agree with the owner as to the value of the land it wishes to take for the public use, and to buy it at a price that is usually satisfactory. And so a railroad often buys its right of way, and the owner of land in a city when he plats it and divides it into blocks and lots usually donates the streets to public use. But if they cannot agree and a condemnation proceeding is resorted to, the commissioners or jury usually fix the value of the land taken at what it is worth.

399. Necessity for Corporations.—Public service corporations and many business corporations are a necessity of modern commercial life. Few men would now be willing to live fifty or a hundred miles from a railroad. Yet a railroad costs so much money that few men alone are able to build one. They require the combined capital of a great many men, and for a proper handling of that combined capital a corporation seems to be the best plan. If only individuals were given the right to build them, there would not be so many miles of railroad in this State, nor would they be anything like so well equipped as now.

Banks are necessary for the easy and ready transaction of business, but there would be few banks if there were no corporations to own them. Individuals die, but corporations need never die. If only individuals could own banks, the business men of the town or city would be very slow to deposit their money in banks; for the owner might suddenly die, and then the bank's business might cease, and perhaps

the depositors would not be able to get their money until the banker's administrator had wound up his estate in the probate court; and, besides, the banker would be slow to loan out his deposits, knowing that if he should suddenly die his depositors might want their money, and if it were loaned out they could not get it. But where the bank is an incorporated one, the president or cashier or any other of its officers may die or become insolvent, his place is filled by the directors, and the bank's business goes on with little or no interruption. Business men understand this fact, and hence they deposit their money in the bank and it loans it out to borrowers, who use it in various kinds of business, and more business means more employment for laborers. In this way banks do a great deal to put money to work, and to keep it at work, but their power to do that would be vastly less if they were not incorporated.

Corporations for the transaction of many other kinds of business seem to be a necessity of a great people devoted to industry and to the development of the resources of healthful commerce.

400. Trusts and Combinations.—But private and public service corporations have no natural right to exist; they exist because the lawmakers, and the people who elect lawmakers, seem to think them necessary. They derive their right to exist from government; they have no power except what the government permits them to exercise. The government can, therefore, restrain them from using their powers in a way to injure the general public, or to be unjust to their employees. It can prohibit them from making combinations or agreements in restraint of trade. Where corporations combine to unjustly and unreasonably raise the prices of the things they sell or to lower the prices of things they buy, the combination is called a trust. Sometimes the agreement is to lessen the amount of the things they produce and thereby to increase their price to the consumer, and some-

times it is for a number of corporations engaged in the same kind of business to consolidate into one company and thus destroy competition between themselves. The State has enacted laws that make illegal all combinations of this kind which result in injury to the general public, and whenever the combination can be shown in court to be an unjust or unreasonable restraint of trade the court will put a stop to it, and if necessary to do that it will even forfeit the charters of the corporations in the combination and not let them longer do business in the State.

401. Guiding Principles In Controlling Corporations.

—The proper control of corporations, and the preventing of trusts, is one of the most serious questions in our present-day politics. It is at the same time one of the hardest and most difficult. It is a question that the people are slow to comprehend. In dealing with it the people should always have before their minds this question, What is best for the general public? And to answer that question they must have an intelligent understanding of the effects of large combinations of capital. Government must always see to it that all energetic men have the very best possible chance to make an honest living, and whatever combinations lessen that chance or weaken their powers of individual manhood must be destroyed. On the other hand, it will not do to assume that all corporations, or even all combinations of companies, are hurtful. If properly hedged about, they may furnish employment to industrious persons, who might otherwise be idle, and they often result in selling to the people things for their comfort at lower prices than would prevail without them. But our Constitution says that "all men have a natural right to the enjoyment of the gains of their own industry." Then all combinations that interfere with that right are wrong, and the people, through the various departments of their government, should prevent them. Justice to all men should be the

controlling principle in dealing with trusts, as in determining every other duty of man to man.

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APPENDIX

(TO CIVIL GOVERNMENT.)

THE CONSTITUTION OF THE UNITED STATES.

PREAMBLE.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I. LEGISLATIVE DEPARTMENT.

Section I. Congress in General.

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section II. House of Representatives.

1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

2. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

*3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.

*NOTE.—So much of clause 3 of section 2 as requires direct taxes to be apportioned among the States has been superseded by the sixteenth amendment, page 452.

The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of *New Hampshire* shall be entitled to choose three, *Massachusetts* eight, *Rhode Island* and *Providence Plantations* one, *Connecticut* five, *New York* six, *New Jersey* four, *Pennsylvania* eight, *Delaware* one, *Maryland* six, *Virginia* ten, *North Carolina* five, *South Carolina* five, and *Georgia* three.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

Section III. Senate.

*1. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year, and of the third class, at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation or otherwise during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a President *pro tempore* in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

*NOTE.—The words "chosen by the Legislature thereof" in the first clause of section 3 have been superseded by the seventeenth amendment, page 452.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

Section IV. Both Houses.

1. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section V. The Houses Separately.

1. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy, and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Section VI. Privileges and Disabilities of Members.

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law and paid out of the Treasury

of the United States. They shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Section VII. Mode of Passing Laws.

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States; if he approves he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section VIII. Powers Granted to Congress.

The Congress shall have power:

1. To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;
2. To borrow money on the credit of the United States;
3. To regulate commerce with foreign nations and among the several States, and with the Indian tribes;
4. To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;
5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;
6. To provide for the punishment of counterfeiting the securities and current coin of the United States;
7. To establish post-offices and post-roads;
8. To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;
9. To constitute tribunals inferior to the Supreme Court;
10. To define and punish piracies and felonies committed on the high seas and offenses against the law of nations;
11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;
12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;
13. To provide and maintain a navy;
14. To make rules for the government and regulation of the land and naval forces;
15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;
16. To provide for organizing, arming and disciplining the militia and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;
17. To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which

the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

Section IX. Powers Denied to the United States.

1. The migration or importation of such persons as any of the States now existing shall think proper to admit shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

3. No bill of attainder or *ex post facto* law shall be passed.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

5. No tax or duty shall be laid on articles exported from any State.

6. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

7. No money shall be drawn from the Treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

8. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

Section X. Powers Denied to the States.

1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

3. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war, unless actually invaded or in such imminent danger as will not admit of delay.

ARTICLE II. EXECUTIVE DEPARTMENT.

Section I. President and Vice-President.

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice-President, chosen for the same term, be elected as follows:

2. Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[*3. The electors shall meet in their respective States and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said house shall in like

*NOTE—This clause has been superseded by the twelfth amendment, page 450.

manner choose the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.]

4. The Congress may determine the time of choosing the electors and the day on which they shall give their votes, which day shall be the same throughout the United States.

5. No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed or a President shall be elected.

7. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them.

8. Before he enter on the execution of his office he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability preserve, protect, and defend the Constitution of the United States."

Section II. Powers of the President.

1. The President shall be Commander-in-chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section III. Duties of the President.

He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section IV. Impeachment.

The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III. JUDICIAL DEPARTMENT.

Section I. United States Courts.

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Section II. Jurisdiction of the United States Courts.

1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases

affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens, or subjects.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trials shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Section III. Treason.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted.

ARTICLE IV. THE STATES AND THE FEDERAL GOVERNMENT.

Section I. State Records.

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section II. Privileges of Citizens, etc.

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall

on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labour in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due.

Section III. New States and Territories.

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States or parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State.

Section IV. Guarantee to the States.

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the Legislature, or of the executive (when the Legislature cannot be convened), against domestic violence.

ARTICLE V. POWER OF AMENDMENT.

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress, provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article, and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI. PUBLIC DEBT, SUPREMACY OF THE CONSTITUTION, OATH OF OFFICE, RELIGIOUS TEST.

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the confederation.

2. This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII. RATIFICATION OF THE CONSTITUTION.

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

AMENDMENTS.

First Amendment.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Second Amendment.

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Third Amendment.

No Soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Fourth Amendment.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Sixth Amendment.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Seventh Amendment.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Eighth Amendment.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Ninth Amendment.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Tenth Amendment.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

Eleventh Amendment.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

Twelfth Amendment.

1. The electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted. The person having the greatest number of votes for President shall be President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall

act as President, as in the case of the death or other constitutional disability of the President.

2. The person having the greatest number of votes as Vice-President shall be the Vice-President if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

Thirteenth Amendment.

1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

Fourteenth Amendment.

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or mili-

tary, under the United States or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each house, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Fifteenth Amendment.

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

2. The Congress shall have power to enforce this article by appropriate legislation.

Sixteenth Amendment.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Seventeenth Amendment.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors of each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature. When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, that the Legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the Legislature may direct. This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

THE DECLARATION OF INDEPENDENCE.

In Congress, July 4, 1776.

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations pursuing invariably the same object, evinces a design to reduce them under absolute dēspotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world.

He has refused to assent to laws, the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the State remaining in the meantime exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies without the consent of our Legislature.

He has affected to render the military independent of and superior to the civil power.

He has combined with others to subject us to a jurisdiction foreign to our Constitution and unacknowledged by our laws; giving his assent to their acts of pretended legislation.

For quartering large bodies of armed troops among us:

For protecting them, by mock trial, from punishment for any murders which they should commit on the inhabitants of these States:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us in many cases of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offenses:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws and altering fundamentally the forms of our government:

For suspending our own Legislature, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the work of death, desolation and tyranny already begun with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow citizens taken captive on the high seas to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrection amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms. Our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them from time to time of attempts by their Legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace friends.

We, therefore, Representatives of the United States of America, in general Congress assembled, appealing to the Supreme Judge of the World for the rectitude of our intentions, do, in the name, and by authority of the good people of these colonies, solemnly publish and declare, that these United States are, and of right ought to be free and independent States; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is and ought to be totally dissolved; and that as free and independent States, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes and our sacred honor.

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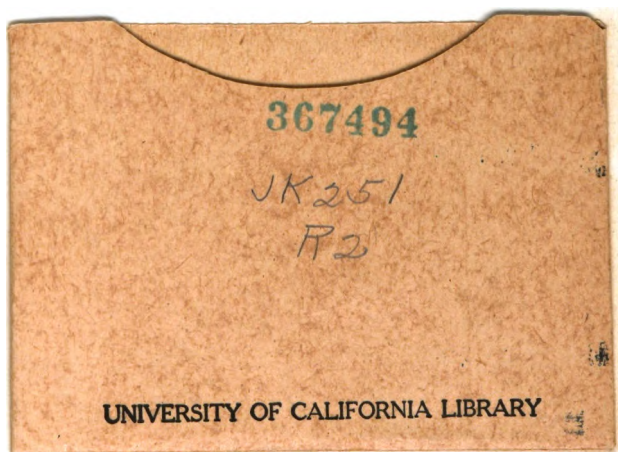
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